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The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2011–BT–DET–0045]

RIN 1905–AC55

Energy Conservation Program: Final Determination of Fans and Blowers as Covered Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; final determination.

SUMMARY: The U.S. Department of Energy (''DOE'') is classifying certain fans and blowers as covered equipment under Part A–1 of Title III of the Energy Policy and Conservation Act, as amended. Accordingly, this document establishes the definition of equipment that is considered fans and blowers.

DATES: This final determination is effective September 20, 2021.

ADDRESSES: *Docket:* The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2011-BT-DET-0045.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

For further information on how to review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Introduction

The following section briefly discusses the statutory authority underlying this determination, as well as the relevant historical background to the inclusion of fans and blowers as covered equipment under the Energy Policy and Conservation Act, as amended (''EPCA'').[1]

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[2] of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency of certain commercial and industrial equipment (hereafter referred to as ''covered equipment''). The purpose of Part A–1 is to improve the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the Nation. (42 U.S.C. 6312(a))

EPCA specifies a list of equipment that constitutes covered equipment.[3] EPCA also provides that ''covered equipment'' includes any other type of industrial equipment for which the Secretary of Energy (''Secretary'') determines inclusion is necessary to carry out the purpose of Part A–1. (42 U.S.C. 6311(1)(L); 42 U.S.C. 6312(b)) EPCA specifies the types of equipment that can be classified as industrial equipment. (42 U.S.C. 6311(2) This equipment includes fans and blowers. (42 U.S.C. 6311(2)(B)(ii) and (iii)). Industrial equipment must be of a type that consumes, or is designed to consume, energy in operation; is distributed in commerce for industrial or commercial use; and is not a covered product as defined in 42 U.S.C. 6291(a)(2) of EPCA other than a component of a covered product with respect to which there is in effect a determination under section 6312(c). (42 U.S.C. 6311(2)(A)).

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1 and hereafter referred to as Part A–1.

[3] ''Covered equipment'' means one of the following types of industrial equipment: Electric motors and pumps; small commercial package air conditioning and heating equipment; large commercial package air conditioning and heating equipment; very large commercial package air conditioning and heating equipment; commercial refrigerators, freezers, and refrigerator-freezers; automatic commercial ice makers; walk-in coolers and walk-in freezers; commercial clothes washers; packaged terminal air-conditioners and packaged terminal heat pumps; warm air furnaces and packaged boilers; and storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. (42 U.S.C. 6311(1)(A)–(K))

B. Background

On June 28, 2011, DOE published a notice of proposed determination of coverage proposing to determine that fans, blowers, and fume hoods qualify as covered equipment (''June 2011 NOPD''). 76 FR 37678. DOE noted that there are no statutory definitions for ''fan,'' ''blower,'' or ''fume hood,'' and presented definitions for consideration. 76 FR 37678, 37679.

In the June 2011 NOPD, DOE preliminarily determined that coverage of fans, blowers, and fume hoods is necessary to carry out the purposes of Part A–1 because coverage would promote the conservation of energy supplies. 76 FR 37678, 37680. DOE estimated that technologies exist which can reduce the electricity consumption of fans and blowers by as much as 20 percent and that there are technologies and design strategies for fume hoods that could reduce energy use by 50 percent. *Id.* DOE requested comment on the proposed definitions and its preliminary determination that coverage of fans, blowers, and fume hoods is necessary to carry out the purposes of Part A–1. 76 FR 37678, 37682.

DOE received seven comments in response to the June 2011 NOPD from the interested parties listed in Table II–1 of this document.

DOE subsequently published a framework document [4] detailing an analytical approach for developing potential energy conservation standards for commercial and industrial fans and blowers should the Secretary classify such equipment as covered equipment. 78 FR 7306 (Feb. 1, 2013). In the January 2013 Framework Document, DOE also requested feedback from interested parties generally on issues related to test methods for evaluating the energy efficiency of commercial and industrial fans and blowers (January 2013 Framework Document at pp. 16–25).

In the January 2013 Framework Document DOE determined that it lacks authority to establish energy conservation standards for fume hoods because fume hoods are not listed as a type of equipment for which DOE could establish standards (January 2013 Framework Document at p. 15). DOE acknowledged that the fan that provides ventilation for the fume hood consumes the largest portion of energy within the fume hood system, and that DOE planned to cover all commercial and industrial fan types, which includes fans used to ventilate fume hoods. *Id.*

On December 10, 2014, DOE published a notice of data availability that presented a provisional analysis estimating the economic impacts and energy savings from potential energy conservation standards for certain fans and blowers. 79 FR 73246.

On April 1, 2015, DOE published a notice of intent to establish a negotiated rulemaking working group under the Appliance Standards and Rulemaking Federal Advisory Committee (hereafter referred to as the ''Working Group'') to negotiate proposed definitions, and, as applicable, certain aspects of a proposed test procedure and proposed energy conservation standards for fans and blowers. 80 FR 17359. On May 1, 2015, DOE published a second notice of data availability of a revised provisional analysis of the potential economic impacts and energy savings that could result from promulgating an energy conservation standard for commercial and industrial fans and blowers. 80 FR 24841 (''May 2015 NODA'').

The Working Group [5] negotiations comprised 16 meetings and three webinars and covered scope, metrics, test procedures, and energy conservation standard levels for fans and blowers.[6] The Working Group concluded its negotiations on September 3, 2015, and approved by consensus vote [7] a term sheet containing recommendations for DOE on scope, energy conservation standards, and a test procedure for the subject industrial equipment. The term sheet containing the Working Group recommendations is available in the commercial and industrial fans and blowers energy conservation standard rulemaking docket. (Docket No. EERE–2013–BT–STD–0006, No. 179) ASRAC approved the term sheet on September 24, 2015. (Docket No. EERE–2013–BT–NOC–0005; Public Meeting Transcript, No. 58, at p. 29) On November 1, 2016, DOE published a third notice of data availability (''November 2016 NODA'') that presented a revised analysis based on the scope and metric recommendations of the term sheet. 81 FR 75742.

On January 10, 2020, DOE received a petition from the Air Movement and Control Association, International (''AMCA''), Air Conditioning Contractors of America, and Sheet Metal & Air Conditioning Contractors of America requesting that DOE establish a Federal test procedure for certain categories of fans based on an upcoming industry test method, AMCA Standard 214, ''Test Procedure for Calculating Fan Energy Index (FEI) for Commercial and Industrial Fans and Blowers'' DOE published a notice of petition and request for public comment (''April 2020 Notice of Petition''). 85 FR 22677 (Apr. 23, 2020). AMCA, Air Conditioning Contractors of America, and Sheet Metal & Air Conditioning Contractors have since withdrawn their petition (AMCA, No.12, at p. 1).[8]

In preparation for this notice, on May 10, 2021, DOE published a request for information requesting comments on a potential fan or blower definition. 86 FR 24752 (''May 2021 RFI'').

On February 14, 2020, DOE published in the **Federal Register** a final rule which updated the procedures, interpretations, and policies that DOE will follow in the consideration and promulgation of new or revised appliance energy conservation standards and test procedures under EPCA. 85 FR 8626; see also 10 CFR part 430, subpart C, appendix A (*i.e.,* ''Process Rule''). The updated Process Rule establishes the process DOE must follow when undertaking a determination of whether industrial equipment should be covered under EPCA. Section 5 of the Process Rule.

[4] *Energy Conservation Standards Rulemaking Framework for Commercial and Industrial Fans and Blowers* (''January 2013 Framework Document'') is included in Docket EERE–2013–BT–STD–0006 and available at *www.regulations.gov/document?D=EERE-2013-BT-STD-0006-0001.*

[5] The Working Group was comprised of representatives from AAON, Inc.; AcoustiFLO LLC; AGS Consulting LLC; AMCA; AHRI, Appliance Standards Awareness Project; Berner International Corp; Buffalo Air Handling Company; Carnes Company; Daikin/Goodman; ebm-papst; Greenheck; Morrison Products; Natural Resources Defense Council; Newcomb & Boyd; Northwest Energy Efficiency Alliance; CA IOUs; Regal Beloit Corporation; Rheem Manufacturing Company; Smiley Engineering LLC representing Ingersoll Rand/Trane; SPX Cooling Technologies/CTI; The New York Blower Company; Twin City Companies, Ltd; U.S. Department of Energy; and United Technologies/Carrier

[6] Details of the negotiation sessions can be found in the public meeting transcripts that are posted to the docket for the energy conservation standard rulemaking at: *www.regulations.gov/docket?D=EERE-2013-BT-STD-0006.*

[7] At the beginning of the negotiated rulemaking process, the Working Group defined that before any vote could occur, the Working Group must establish a quorum of at least 20 of the 25 members and defined consensus as an agreement with less than 4 negative votes. Twenty voting members of the Working Group were present for this vote. Two members (Air-Conditioning, Heating, and Refrigeration Institute and Ingersoll Rand/Trane) voted no on the term sheet.

[8] The parenthetical reference provides a reference for information located in DOE Docket No. EERE–2011–BT–DET–0045. The references are arranged as follows: (Commenter name, comment docket ID number, page of that document). If one comment was submitted with multiple attachments, the references are arranged as follows: (Commenter name, comment docket ID number, attachment number, page of that document). The attachment number corresponds to the order in which the attachment appears in the docket. If the information was submitted to a different DOE docket, the DOE Docket number is additionally specified in the reference.

Pursuant to the updated Process Rule, if DOE determines to initiate the coverage determination process, it will first publish a notice of proposed determination, providing an opportunity for public comment of not less than 60 days, in which DOE will explain how coverage of the equipment type that it seeks to designate as ''covered'' is ''necessary'' to carry out the purposes of EPCA. Section 5(b) of the Process Rule. DOE will publish its final decision on coverage as a separate notice, an action that will be completed prior to the initiation of any test procedure or energy conservation standards rulemaking (*i.e.,* DOE will not issue any requests for information, notices of data availability, or any other mechanism to gather information for the purpose of initiating a rulemaking to establish a test procedure or energy conservation standard for the proposed covered equipment prior to finalization of the coverage determination). Section 5(c) of the Process Rule.

Because this coverage determination was already in progress at the time the revised Process Rule was published, DOE is applying those provisions moving forward (*i.e.,* rather than reinitiating the entire rulemaking process). To date, DOE has not proposed test procedures or energy conservation standards for fans and blowers.

II. General Discussion

DOE developed this determination after considering comments, data, and information from interested parties that represent a variety of interests. Table II–1 lists the interested parties that have provided comments on the January 2013 Framework,[9] June 2011 NOPD, April 2020 Notice of Petition,[10] and May 2021 RFI relevant to the coverage determination.

TABLE II–1—JANUARY 2013 FRAMEWORK, JUNE 2011 NOPD, APRIL 2020 NOTICE OF PETITION, AND MAY 2021 RFI WRITTEN COMMENTS

Organization(s)	Reference in this NOPR	Organization type	January 2013 framework	June 2011 NOPD	April 2020 notice of petition	May 2021 RFI
Air Movement and Control Association International.	AMCA	Trade Association		X		X
Air-Conditioning, Heating, and Refrigeration Institute.	AHRI	Trade Association	X	X	X	X
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, National Consumer Law Center, and Natural Resources Defense Council.	Efficiency Advocates	Efficiency Organizations		X		
Appliance Standards Awareness Project/National Research Defense Council.	ASAP/NRDC	Efficiency Organization				X
Appliance Standards Awareness Project, Northwest Energy Efficiency Alliance, Natural Resources Defense Council, and Alliance to Save Energy.	ACEEE et al	Efficiency Organization	X			
China World Trade Organization, Technical Barriers to Trade National Notification and Enquiry Center.	China WTO/TBT	Government Entity		X		
Cooling Technology Institute	CTI	Trade Association				X
Daikin Applied	Daikin	Manufacturer			X	
Ebm-papst Inc	Ebm-papst	Manufacturer	X	X		X
Edison Electric Institute	EEI	Utility	X			
Greenheck Group	Greenheck	Manufacturer				X
Ingersoll Rand/Trane	Ingersoll Rand/Trane	Manufacturer	X			
Johnson Controls	Johnson Controls	Manufacturer			X	
Lennox International Inc	Lennox	Manufacturer	X		X	
Marley Engineered Products LLC	MEP	Manufacturer				X
Morrison Products Inc	Morrison Products	Manufacturer	X			
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organizations		X		
Pacific Gas and Electric Company, Southern California Edison, San Diego Gas and Electric Company.	PG&E, SCE, SDG&E	Utility				X
Pacific Gas and Electric Company, San Diego Gas and Electric, Southern California Gas Company, and Southern California Edison.	CA IOUs	Utility	X	X		

The comments received specific to the fan and blower definition, fan and blower coverage, and DOE's decision regarding a definition and coverage for fans and blowers are discussed in the paragraphs that follow. However, DOE does not reference or respond to comments made by interested parties regarding issues that are outside the scope of this final determination (*e.g.,* comments related to potential energy conservation standards and test procedures). The comments from interested parties and term sheet recommendations related to the test procedures and energy conservation standards will be addressed separately as part of any potential rulemaking for establishing test procedures and energy conservation standards for fans and blowers. Further, comments related to fume hoods are not discussed in this final determination as DOE has determined it does not have the statutory authority to include fume hoods as covered equipment.

A. Definition and Scope of Coverage

Although EPCA lists fans and blowers as types of equipment that may be defined as industrial equipment, these terms are not defined. (*See* 42 U.S.C. 6311(2)(B)(ii) and (iii)) As noted, DOE proposed definitions for ''fan'' and ''blower'' in the June 2011 NOPD.[11] 76

[9] DOE Docket No. EERE–2013–BT–STD–0006.

[10] DOE Docket No. EERE–2020–BT–PET–0003.

[11] DOE also proposed a definition of ''fume hood,'' but as discussed DOE has determined it does not have statutory authority to include fume hoods as covered equipment.

FR 37678, 37679. Specifically, DOE proposed the following definitions:

A *fan* is an electrically powered device used in commercial or industrial systems to provide a continuous flow of a gas, typically air, for ventilation, circulation, or other industrial process requirements. Fans are classified as axial or centrifugal. Axial fans move an airstream along the axis of the fan. Centrifugal fans generate airflow by accelerating the airstream radially. A fan may include some or all of the following components: motor and motor controls, rotor or fan blades, and transmission and housing.

A *blower* is a type of centrifugal fan.

Id.

In response to the June 2011 NOPD, the CA IOUs encouraged DOE to consult test procedures of AMCA, American Society of Heating, Refrigeration and Air-Conditioning Engineers (''ASHRAE''), and National Fire Protection Association, as well as any other test procedures that may be relevant to this rulemaking. They also encouraged DOE to develop a more robust definition for blowers suggesting that fans and blowers are differentiated by the method used to move the air and by the system pressure they must operate against. The CA IOUs recommended DOE rely on specific ratios of the discharge pressure over the suction pressure, to define fans and blowers. The CA IOUs also urged DOE to ensure that the definitions for fans do not overlap with residential air handlers or commercial packaged air conditioning units. (CA IOUs, No. 6, at pp. 3–5).

In response to the June 2011 NOPD, NEEA asked whether the proposed definition of ''fan'' included mixed flow fans which have aspects of both an axial and centrifugal fan, citing a tubular centrifugal fan as an example of this type of fan. NEEA also asked whether the proposed definition of ''blower'' would include mixed flow blowers that have aspects of both an axial and centrifugal fan and are frequently used for laboratory exhaust applications. (NEEA, No. 5, at p. 1–2). The Efficiency advocates encouraged DOE to cover mixed flow fans (Efficiency advocates, No. 4, at p. 3).

In response to the June 2011 NOPD, AMCA commented generally that the proposed definitions of fans and blowers were not consistent with the established fan industry definitions and recommended that DOE adopt the relevant industry standards (AMCA, No. 7, at p. 3).

Taking into consideration the comments received to the June 2011 NOPD, in the January 2013 Framework Document, DOE considered the following definitions for ''fan'' and ''blower:''

Commercial/Industrial Fan: A device used in commercial or industrial systems to provide a continuous flow of a gas, typically air, by an impeller fit to a shaft and bearing(s). A fan may be manufactured with or without a housing component.

Blower: An axial or centrifugal fan with a specific ratio between 1.11 and 1.20.

(January 2013 Framework Document at pp. 7 and 9)

DOE also acknowledged that the terms ''fan'' and ''blower'' are used interchangeably by the industry. (January 2013 Framework Document at p. 9)

In response to the January 2013 Framework Document, the CA IOUs commented that AMCA 99–10, ''Standards Handbook'' [12] included a fan definition and that the American Society of Mechanical Engineers (''ASME'') relied on specific ratios of the total pressure at the outlet of the equipment over the total inlet pressure to distinguish between fans, blowers, and compressors. The CA IOUs commented that DOE should ensure the definitions for fans, blowers, and compressors [13] are aligned to prevent any loopholes. (Docket No. EERE–2013–BT–STD–0006; CA IOUs, No. 11, at p. 3) Morrison Products commented that while the industry used the terms fan and blower interchangeably, they recommend using the ASME terminology. (Docket No. EERE–2013–BT–STD–0006; Morrison Products, No. 15, at p. 5) AMCA commented that the terms fan and blower were used interchangeably and suggested a definition for the term fan.[14] (Docket No. EERE–2013–BT–STD–0006; AMCA, No. 19, at pp. 4, 43) The American Council for an Energy-Efficient Economy and other efficiency organizations [15] (''ACEEE, et al.'') commented in support of establishing a broad definition for fans and then specify which fans should be excluded from coverage, as this approach is more administrable and less subject to unintended loopholes. ACEE, et al. also commented that the a distinction between fans, blowers, and compressors has not been established. (Docket No. EERE–2013–BT–STD–0006; ACEEE, et al.; No. 25, at p. 3) In response to the January 2013 Framework Document, ebm-papst commented that the terms ''commercial'' and ''industrial'' would require further clarification and that a fan definition should rely on physical features (*e.g.,* size, performance, construction). Ebm-papst noted that in Europe, an impeller fitted to a shaft and bearing is not considered a ''fan''. Rather the entity that combines the impeller with an electric motor is considered the fan manufacturer. (Docket No. EERE–2013–BT–STD–0006; emb-papst, No. 20, at p. 6) Emb-papst added a fan description from the European Ventilation Industry Association which describes a fans as: ''A fan is a combination of an impeller(s) and motor. It may also include a housing, mechanical drive and a variable speed drive.'' (Docket No. EERE–2013–BT–STD–0006; emb-papst, No. 20, at p. 8)

Consistent with DOE's acknowledgement, the Working Group commented that the terms ''fan'' and ''blower'' are used interchangeably in the U.S. market and suggested eliminating the term ''blower'' to avoid potential confusion. (Docket No. EERE–2013–BT–STD–0006; Public Meeting Presentation, No. 106, at p. 47) To the extent that a blower would meet the criteria in the proposed definition, it is a fan. As such, DOE is not considering further a separate definition for ''blower.''

DOE reviewed existing industry standards to compare how industry standards define the terms fan and blower and distinguish this equipment from compressors. AMCA 99–10 [16] includes an energy limit of 25 kilojoule

[12] ANSI/AMCA Standard 99–10: Standards Handbook. Available at *www.amca.org.*

[13] Fans and compressors are equipment used to move amounts of gas (generally air). A fan moves gas with a low increase in pressure while a compressor moves gas with a high increase in pressure. DOE established a definition of compressor as follows: A machine or apparatus that converts different types of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher pressure values above atmospheric pressure and has a pressure ratio at full-load operating pressure greater than 1.3. See 10 CFR 431.342.

[14] AMCA recommended defining fan as a rotary bladed machine designed to convert mechanical power to air power in order to maintain continuous flow from the inlet(s) to outlet(s). Energy output is limited to 25 kJ/kg of air. A fan contains the following basic components: (a) Impeller(s): Rotary bladed aerodynamic component responsible for the total energy increase of the airstream delivered by the fan; (b) Fan Structure: Any integral component(s) necessary to support the impeller, alter(s) the energy-composition of the airstream, or direct(s) flow into or out of the impeller. These components must be present when testing to develop performance ratings of the fan; (c) Inlet: Surface(s) bounded by a portion of the fan structure across which air enters the fan; (d) Outlet: Surface(s) bounded by a portion of the fan structure from which air exits the fan. (Docket No. EERE–2013–BT–STD–0006; AMCA, No. 19, at p. 43)

[15] Appliance Standards Awareness Project, Northwest Energy Efficiency Alliance, Natural Resources Defense Council, and Alliance to Save Energy.

[16] ANSI/AMCA Standard 99–10: Standards Handbook. Available at *www.amca.org.*

(''kJ'')/kilogram (''kg'') of air[17] in its fan definition. As discussed, the specific ratio is often used to separate fans (specific ratio less than or equal to 1.11), blowers (specific ratio greater than 1.11 and less than or equal to 1.20), and compressors (specific ratio greater than 1.20), however, ASME states that this distinction in common practice is imprecise.[18] The ISO 13349:2010, ''Fans—Vocabulary and definitions of categories''[19] defines fans based on a maximum energy limit of 25 kJ/kg of air and indicates that this is equivalent to a specific ratio of 1.3. DOE presented this information to the Working Group. (Docket No. EERE–2013–BT–STD–0006; Public Meeting Presentation, No. 106, at p. 47). Subsequently, the Working Group developed a draft definition of fan as follows: ''a rotary bladed machine used to convert power to air power with an energy output limited to 25 kJ/kg of air; typically consisting of an impeller, a shaft, bearings, a structure or housing, transmission, driver, and control if included by the manufacturer at the time of sale''. The Working Group noted that this definition was still a work in progress and that AMCA would consult its technical committee to confirm the value used to characterize the energy output limit (Docket No. EERE–2013–BT–STD–0006; Public Meeting Presentation, No. 106, at pp. 45, 47).

Subsequently, AMCA's fan technical committee commented in support of the Working Group's definition. (Docket No. EERE–2013–BT–STD–0006; AMCA, No. 74, at p. 1) This definition was later included as a draft working definition in a draft term sheet with some modifications as follows: ''a rotary bladed machine used to convert power to air power, with an energy output limited to 25 kJ/kg of air, consisting of an impeller, a shaft, bearings, and a structure or housing; and includes any transmissions, driver, and/or controls if integrated, assembled, or packaged by the manufacturer at the time of sale.'' (Docket No. EERE–2013–BT–STD–0006; Draft Term Sheet, No. 143 at p. 1) The approved term sheet did not include a recommended definition of ''fan,'' as the definition established by the Working Group was still considered a draft definition at the time. (Docket No. EERE–2013–BT–STD–0006; Public Meeting Transcript, No. 165 at p. 76) Ingersoll Rand/Trane, commented in support of the fan definition as drafted by the Working Group (Docket No. EERE–2013–BT–STD–0006; Ingersoll Rand/Trane, No. 153 at p. 6).

A recent industry test procedure, AMCA 214–21,[20] includes a definition similar to that drafted by the Working Group. AMCA 214–21 defines a fan as follows: ''a rotary bladed machine used to convert electrical or mechanical power to air power, with an energy output limited to 25 kJ/kg of air. It consists of an impeller, a shaft and bearings and/or driver to support the impeller, as well as a structure or housing. A fan may include a transmission, driver, and/or motor controller.''

In the May 2021 RFI, DOE requested comments on this definition and the potential addition of the descriptor ''commercial and industrial'' with the term ''fan'' to clarify that the subject fans are industrial equipment and that the term excludes ceiling fans and furnace fans, both covered products defined at 10 CFR 430.2. In the May 2021 RFI, DOE also initially determined that the terms ''fan'' and ''blower'' can be used interchangeably. 86 FR 24752, 24754.

In response to the May 2021 RFI, ASAP/NRDC supported the adoption of the AMCA 214–21 definition of fan as the definition for commercial and industrial fans. (ASAP/NRDC, No. 14, at p. 1) PG&E, SCE, SDG&E also commented in support of this definition. In addition, PG&E, SCE, SDG&E commented that the AMCA 214–21 fan definition included an energy output limit of 25 kJ/kg of air which is appropriate to distinguish a fan from a compressor (PG&E, SCE, SDG&E, No. 17, at pp. 1–2). Further, PG&E, SCE, SDG&E noted that the definition for fans in AMCA 214–21 includes the option (but not the requirement) for a motor controller and is not specific to electrically-driven equipment. PG&E, SCE, SDG&E, also noted that the definition does not specify a fan flow angle and includes centrifugal, axial, and mixed-flow blade orientations (*i.e.,* what are commonly referred to as ''blowers''). (PG&E, SCE, SDG&E, No. 17, at p. 2). AMCA, Greenheck, and ebm-papst supported the definition of fan in AMCA 214–21 and further verified that they consider the terms ''fan'' and ''blower'' to be interchangeable (AMCA, No. 12, at p. 3; ebm-papst, No. 19, at p. 1; Greenheck, No. 18, at p. 1). AMCA also supported DOE's position that the definition of compressor in the compressor regulation sufficed to differentiate fans from compressors. (AMCA, No. 12, at p. 3) Ebm-papst stated that limiting the energy output to 25 kJ/kg of air on the fan definition is appropriate to distinguish a fan from a compressor (ebm-papst, No. 19, at p. 1). In addition, AMCA commented that fans that use steam, combustion, or drivers other than electric motors suitable to be powered by the electricity ''grid'' should be exempted from any future DOE regulation. (AMCA, No. 12, at p. 2)

DOE is establishing a definition for fan or blower, which provides the scope of coverage of the final determination, and is identical to the definition of ''fan'' in AMCA 214–21. DOE has determined that the terms ''fan'' and ''blower'' are used interchangeably in the U.S. market and therefore applies the same definition to the terms ''fan'' and ''blower'' (also referred to collectively as ''fan'' in the remainder of this final determination).

DOE notes that the maximum energy limit of 25 kJ/kg of air is equivalent to a pressure ratio of 1.3.[21] The value of 1.3 matches the pressure ratio used in the definition of compressor at 10 CFR 431.342. Based on the comments from interested parties and on the existing DOE definition of ''compressor,'' DOE concludes that the maximum fan energy limit of 25 kJ/kg is appropriate to distinguish fans from compressors and is adopting this upper limit in the definition.

With regard to the criterion that a fan must convert ''electrical and mechanical power into air power,'' fans that are powered by an engine or any other driver would meet this criterion as the engine or other driver would be providing mechanical power that is converted into air power. Inclusion of the term ''mechanical'' covers fans that are sold without an electric motor or other driver and which convert mechanical power into airpower.

In response to the May 2021 RFI, Ebm-papst agreed that the ''fan'' definition in AMCA 214–21 is appropriate for the coverage determination and commented that the ''commercial and industrial fan'' definition, as based on the AMCA 214–21 fan definition, should include circulating fans that are not ceiling fans as defined at 10 CFR 430.2. (ebm-papst,

[17] This value characterizes the increase in pressure of the air being moved by the fan. An energy output of 25 kJ/kg is equivalent to a pressure ratio of 1.3. For an air density of 1.2 kg/m^3, the fan pressure is 1.2 × 25 kJ/kg, *i.e.,* 30 kPa, and the pressure ratio is calculated as (100+30)/100 = 1.30 (where atmospheric pressure = 100 kPa).

[18] ASME PTC 11–2008 Standard: Fans. Available at *www.asme.org.*

[19] ISO 13349:2010 Fans—Vocabulary and definitions of categories. Available at *www.iso.org.*

[20] ANSI/AMCA 214–21, Test Procedure for Calculating Fan Energy Index (FEI) for Commercial and Industrial Fans and Blowers. (''AMCA 214–21'')

[21] For an air density of 1.2 kg/m^3, the fan pressure is 1.2 × 25 kJ/kg, *i.e.,* 30 kPa, and the pressure ratio is calculated as (100 + 30)/100 = 1.30 (where atmospheric pressure = 100 kPa).

No. 19, at p. 1) PG&E, SCE, SDG&E commented that including the terms ''commercial and industrial'' with ''fan'' would limit confusion with residential products, *i.e.*, circulating fans and furnace fans. (PG&E, SCE, SDG&E, No. 17, at p. 2) CTI generally supported the adoption of the AMCA 214–21 definition of fan as the definition for commercial and industrial fans but asserted that the definition was unclear as to which fans would fall within DOE's scope of coverage. CTI explained that they were neutral on the term ''commercial and industrial'' to further describe fans, but expressed concern with the fans that could fall under such descriptor. In addition, CTI expressed concerns that embedded fans were not explicitly excluded from the scope of AMCA 214–21, only its foreword, and thought that embedded fans should be specifically excluded from the scope of AMCA 214–21. (CTI, No. 13, pp. 1–2) AMCA recommended that ceiling fans and furnace fans be explicitly excluded from the scope of any potential DOE regulation because of the existing regulations of those products. (AMCA, No. 12, at p. 3)

While generally supporting use of the AMCA 214–21 definition as the DOE definition for ''fan'', AHRI expressed that ''commercial and industrial'' had a ''special meaning'' not identical to the 214–21 definition of fan and that hat required further elaboration by DOE. AHRI recommended that the definition for ''commercial and industrial fan'' needs to make clear that fans within scope are industrial equipment, including commercial fans per 42 U.S.C. 6311(2), and exclude ceiling fans, furnace fans, and fans embedded in other consumer products. (AHRI, No. 16.2, at p. 2). AHRI also suggested a definition for ''commercial and industrial fans'' that would exclude equipment that utilizes single-phase electricity and exclude equipment with a rated fan shaft power less than or equal to 1 hp (or fan electrical input power above 0.89 kilowatts), and listed specific equipment categories containing fans for which AHRI recommends exclusions (AHRI, No. 16.1, at p. 1; 16.2, at pp. 2, 3). AHRI asserted that collectively these exclusions would be consistent with the scope of the AMCA 214–21 test procedure, the scope of the test procedure as recommended in the petition presented in the April 2020 Notice of Petition, and the scope of the test procedure and energy conservation standards as recommended by the Working Group. AHRI also expressed concern that manufacturers of DOE regulated equipment that contain commercial and industrial fans would be subject to double regulations. (AHRI, No. 16.2, at p. 3). Ebm-pabst, while stating its support of the AMCA 214–21 ''fan'' definition for use in DOE's coverage determination, also suggested that furnace fans and ceiling fans, as defined in 10 CFR 430.2, should be specifically excluded in the ''commercial and industrial fan'' definition and commented that fans operating at three-phase or rated at greater than 127 volts would typically be considered as commercial and industrial fans (ebm-papst, No. 19, at p.1). MEP recommended that the definition for a commercial and industrial fan should include a requirement for polyphase electric current with a fan shaft power greater than 3 hp, to avoid including ''residential fans'' in regulations. (MEP, No. 15, at p. 1). AMCA commented that the scope of any potential DOE regulation should be based on a lower shaft power limit of 1 horsepower to align with ASHRAE 90.1–2019 and the 2021 International Energy Conservation Code. (AMCA, No.12, at p. 3)

While generally supporting use of the AMCA 214–21 definition as the DOE definition for ''fan'', Greenheck recommended establishing a separate definition for fans that are embedded in a manufactured assembly where the assembly includes functions other than air movement require further definition that considers the utility, function and overall energy consumption and efficiency of the manufactured assembly. (Greenheck, No. 18, p. 1) MEP also recommended that DOE establish a separate definition for embedded fans as provided by AMCA 214–21 and to make clear that embedded fans are not included in the definition of ''fans.'' (MEP, No. 15, at p. 1) CTI commented that the majority of fan energy savings derive from standalone fans as opposed to embedded fans. CTI commented that an exemption for fans used in heat rejection equipment is appropriate because the overall performance of the heat rejection equipment is the key metric and not the performance of the individual fan component. (CTI, No. 13, at p. 2)

In response to the April 2020 Notice of Petition, DOE received a number of comments relevant to the scope of the determination. AHRI commented that DOE should initiate a new coverage determination process and that the final scope of coverage should be limited to stand-alone fans. AHRI commented that HVACR and water heating equipment is built, tested, rated, and certified as a completed design; and that modifying a component, including fans, would change the performance of the equipment. AHRI commented that energy conservation standards could create a safety issue for replacement fans in equipment to the extent that compliance with safety and performance standards could be affected by a change in the fan performance. (Docket No. EERE–2020–BT–PET–0003; AHRI, No. 14 at p. 3) [22] Daikin commented in support of AHRI's comment. (Docket No. EERE–2020–BT–PET–0003; Daikin, No. 8 at p. 1) Lennox similarly opposed regulating fans that are components of HVACR equipment. (Docket No. EERE–2020–BT–PET–0003; Lennox, No. 5 at pp. 2–3)

In response to the April 2020 Notice of Petition, Johnson Controls commented in support of initiating a coverage determination for commercial and industrial fans and blower products within the same scope and noted exemptions of the petition by AMCA, the Air Conditioning Contractors of America, and the Sheet Metal & Air Conditioning Contractors of America. Johnson Controls commented that they strongly oppose any regulatory measures aimed at fans that are components of heating, ventilation, and air conditioning (''HVAC'') equipment where the primary purpose of the equipment is to heat or cool a space, and for which there are already well-established equipment-level energy efficiency. (Docket No. EERE–2020–BT–PET–0003; Johnson Controls, No. 10 at p. 1)

In this final rule, DOE is no longer including the description ''commercial and industrial'' with the term ''fan'', since DOE has determined that this language is redundant, given the statutory definition of ''industrial equipment'' in 42 U.S.C. 6311(2). In addition, as noted above, comments also raised questions as to whether including ''commercial and industrial'' would provide more clarity or provoke more uncertainty. The definition of ''industrial equipment'' explicitly excludes covered products, other than a component of a covered product. (42 U.S.C. 6311(2)(A)(iii)) Therefore, the inclusion of ''commercial and industrial'' is not necessary to clarify the exclusion of ceiling fans and furnace fans, both covered products defined at 10 CFR 430.2.

While fans would typically operate on three-phase power and not on single-phase power, this criterion does not necessarily distinguish a fan as industrial equipment, because some

[22] As previously discussed, AHRI repeated these arguments in response to the May 2021 RFI.

fans are sold without a motor (making it impossible to determine whether they would be operated on single-phase or three-phase power) and some fans could potentially be operated with either a three-phase or single-phase motor. As such, DOE is not including a phase criterion as part of the definition since it does not sufficiently distinguish a fan as industrial equipment.

Further, while larger fans (*i.e.,* fans with higher fan shaft input power) are typically used in commercial and industrial applications, some with lower fan shaft input power are also used in smaller commercial and industrial applications. Because nothing would formally prevent the use of a fan with a lower shaft input power in commercial and industrial applications, DOE is not using shaft input power in defining fans and finds the definition as-is will provide sufficient demarcation between industrial equipment and consumer products. DOE may consider fan shaft power when establishing the scope for potential fan test procedures and energy conservation standards.

Commenters raised concerns that including embedded fans would produce overlapping standards and create multiple standard cycles, and questioned how DOE would evaluate performance of embedded fans that work as a component of a system. As discussed, the statutory definition of ''industrial equipment'' generally excludes covered products, but does not exclude the component of covered products. EPCA explicitly provides that industrial equipment can be a component of a covered product if the Secretary determines in a rule that such equipment is to a significant extent, distributed in commerce other than as component parts for consumer products and such equipment otherwise meets the definition of industrial equipment. (42 U.S.C. 6311(2)(A)(iii); 42 U.S.C. 6312(c)) While some fans that meet the definition of ''fan'' as defined in this Final Determination may be component parts of consumer products, not all fans as defined are such. Therefore, whether a fan is embedded is not a criterion that can be reliably used to identify ''fans''.

While some commenters recommended specific exclusions from the fan definition, as stated and discussed in detail in section II.B, DOE has determined that fans as defined in this final determination and without further exclusions qualify as ''covered equipment'' under part A–1 of Title III of EPCA. (*See* 42 U.S.C. 6311(2)(A) and 42 U.S.C. 6312(b)) This final determination does not establish test procedures or energy conservation standards for fans. In evaluating potential test procedures and energy conservation standards, DOE will consider the extent to which any such test procedures or standards are appropriate and justified for specific fans.

Based on the foregoing discussion, DOE is establishing the term ''fan'' to mean a rotary bladed machine used to convert electrical or mechanical power to air power, with an energy output limited to 25 kilojoule (kJ)/kilogram (kg) of air. It consists of an impeller, a shaft, and bearings and/or driver to support the impeller, as well as a structure or housing. A fan may include a transmission, driver, and/or motor controller. DOE is applying the same definition to the term ''blower''.

B. Evaluation of Fans and Blowers as Covered Equipment

As stated previously and discussed in detail in the following paragraphs, DOE has determined that fans (*i.e.,* fans and blowers) meet the criteria for inclusion as ''covered equipment.'' (*See* 42 U.S.C. 6311(2)(A) and 42 U.S.C. 6312(b))

In response to the April 2020 Notice of Petition, AHRI commented that any final coverage determination that would rely on the analysis performed during the ASRAC process would not be appropriate given concerns related to the fan performance data used which was not certified performance data and was not confirmed to be reflective of fans that are components of HVACR and water heating equipment. (Docket No. EERE–2020–BT–PET–0003; AHRI, No. 14 at p. 3) Lennox commented that the June 2011 NOPD analysis lacked specificity and that DOE should account for the findings of the Working Group. (Docket No. EERE–2020–BT–PET–0003; Lennox, No. 5 at p. 2)

The November 2016 NODA analysis included market and technical information to characterize and evaluate the impacts of potential standards on certain embedded fans. 81 FR 75742,75751. As presented and discussed in detail in sections II.B.1, II.B.2, and II.B.4 of this document, DOE has updated its analysis to account for the findings of the Working Group and additional information collected after the publication of the November 2016 NODA.

As noted, EPCA provides that ''covered equipment'' includes any other type of industrial equipment which the Secretary classifies as covered equipment for which the Secretary has determined coverage is necessary to carry out the purpose of Part A–1. 42 U.S.C. 6311(1)(L). ''Industrial equipment'' is any article of specifically listed equipment that is of a type, which (1) in operation consumes, or is designed to consume, energy; (2) to any significant extent, is distributed in commerce for industrial or commercial use; (3) is not a ''covered product,'' and (4) for which the Secretary has determined coverage is necessary to carry out the purpose of Part A–1. (42 U.S.C. 6311(2)(A); 42 U.S.C. 6312(b))

EPCA lists fans (*i.e.,* fans and blowers) among the equipment that may be industrial equipment. (42 U.S.C. 6311(2)(B)(ii) and (iii)) DOE addresses the requirements for determining that fans are ''industrial equipment'' and ''covered equipment'' in the following paragraphs.

1. Energy Consumption in Operation

To qualify as ''industrial equipment'' fans and blowers must be of a type which in operation consumes, or is designed to consume, energy. (42 U.S.C. 6311(2)(A)(i))

In the 2011 NOPD, DOE used information from the 2009 U.S. Energy Information Administration (''EIA'') Annual Energy Outlook (''AEO'') to estimate the total energy consumption of equipment covered under the then proposed definitions of fan and blower in the commercial sector.[23] DOE also used the 2009 EIA Manufacturing Energy Consumption Survey to estimate the total electricity consumption of the industrial sector. DOE then used information on the percentage of fan and blower electricity use in industry from an American Council for an Energy-Efficient Economy study[24] to calculate fan and blower electricity use in the industrial sector. DOE estimated that ''commercial fans and blowers'' consumed 139,533 million kWh of electricity per year while ''industrial fans and blowers'' consumed 90,057 million kWh of electricity per year. 76 FR 37678, 37979.

In response to the 2011 NOPD and the May 2021 RFI, AHRI commented that the energy consumption estimate provided by DOE was based on outdated data and did not account for energy saving measures required by the major energy building codes in the U.S. AHRI stated that ASHRAE Standard 90.1–2010 *Energy Standard for Buildings Except Low-Rise Residential Building*

[23] DOE used AEO's estimate of total energy consumption in commercial buildings by end use (*e.g.,* lighting, cooking, and office equipment) and selected ''ventilation'' as the representative end use for fans as this equipment is used to provide building ventilation.

[24] Energy Efficiency and Electric Motors, Report PB–259 129, A.D. Little, Inc. 1976., U.S. Federal Energy Administration, Office of Industrial Programs. Springfield, VA: National Technical Information Service.

(''ASHRAE Standard 90.1'') includes limits on the energy consumption of commercial fans and has been adopted in most states. (AHRI, No. 3, at pp. 2–3)

For this final determination, DOE updated its analysis to include information from a 2021 DOE study to estimate the amount of motor electricity use represented by fans and blowers in the industrial and commercial sectors.[25] Based on this study, DOE estimates that fans and blowers consume 192,085 million kWh of electricity per year in the commercial sector and 112,942 million kWh of electricity per year in the industrial sector.

Both the estimates from the June 2011 NOPD and the updated estimates demonstrate that fans and blowers consume energy in operation. Therefore, DOE concludes that fans and blowers satisfy the first element of ''industrial equipment'' required by 42 U.S.C. 6311(2)(A)(i).

2. Distribution in Commerce

To qualify as ''industrial equipment'' fans and blowers must be, to a significant extent, distributed in commerce for industrial and commercial use.[26] (42 U.S.C. 6311(2)(A)(ii))

DOE published shipments estimates for certain varieties of fans to support the November 2016 NODA analysis. The November 2016 NODA analyzed a subset of fans operating with a shaft input power equal to or greater than 1 horsepower and fan air power equal to or less than 150 horsepower as recommended in the term sheet. Generally, the scope excluded certain fans used in HVACR equipment subject to DOE energy conservation standards and specific categories of fans such as safety fans. 81 FR 75742, 75745–75746 (Docket No. EERE–2013–BT–STD–0006; No. 179, Recommendation #1, 2, 3, 5, at pp. 1–4)

In the November 2016 NODA, DOE estimated annual shipments of fans in scope of the analysis to be 1.18 million with approximately 18 percent for use in industrial applications and 82 percent for use in commercial applications. (Docket No. EERE–2013–BT–STD–0006; National Impact Analysis Spreadsheet, No. 192) The shipments of all fans and blowers covered under the definition of ''fan'' as established in this final determination are likely higher.

In response to the November 2016 NODA analysis, A.O. Smith Corporation (''A.O. Smith'') commented that there were additional categories of equipment that incorporate fans. A.O Smith listed equipment such as boilers, water heaters, and pool heaters. (Docket No. EERE–2013–BT–STD–0006; A.O. Smith, No. 219 at p. 2) Greenheck listed other HVACR equipment that were not captured in DOE's estimate. (Docket No. EERE–2013–BT–STD–0006; Greenheck, No. 221.1 at pp. 20–21) However, A.O. Smith and Greenheck did not provide quantitative information to estimate these shipments. (Docket No. EERE–2013–BT–STD–0006; A.O. Smith, No. 219 at p. 2; Greenheck, No. 221.1 at pp. 20–21) AHRI commented that they estimated the number of fans in HVACR equipment to be between five to 14 million units. (Docket No. EERE–2013–BT–STD–0006; AHRI, No. 222 at p. 15) Daikin commented in support of this estimate and added that DOE overestimated the number of fans in air-handling units, noting that air-handler shipments should be closer to 130,000–230,000. (Docket No. EERE–2013–BT–STD–0006; Daikin, No. 216 at p. 4) AHRI submitted additional shipments data to the California Energy Commission (''CEC'') Fan rulemaking docket which included updated shipments estimates.[27]

DOE reviewed the data submitted by AHRI to the CEC and subsequently revised the shipment estimates prepared for the November 2016 NODA. Specifically, DOE revised (1) air handling unit shipments from 330,402 units to 65,000 units; (2) chiller shipments from 12,759 to 27,000 units and used 7 instead of 14 fans per unit to calculate corresponding fan units; and (3) the number of fans per unit used in commercial packaged air-conditioning and heating equipment by capacity range.[28] The updates reduced the total shipments for the fans analyzed in the November 2016 NODA from 1.18 million to 721,725 units.[29]

Based on the shipments data, DOE estimates the shipments of fans and blowers to be at least 721,725 units per year. Both the estimates from the June 2011 NOPD and the updated estimates demonstrate that fans and blowers are distributed in commerce to a significant extent for industrial and commercial use, satisfying the second statutory element to qualify as ''industrial equipment''. (*See* 42 U.S.C. 6311(2)(A)(ii))

3. Prior Inclusion as a Covered Product

To qualify as ''industrial equipment'' fans and blowers must not be a ''covered product'' as that term is defined in 42 U.S.C. 6291(a)(2). (42 U.S.C. 6311(2)(A)(iii))

''Covered product'' is defined through reference to the enumerated list of products at section 6292(a) of EPCA, which includes ''any other type of consumer product which the Secretary classifies as a covered product'' pursuant to certain statutory criteria. (42 U.S.C. 6291(a)(2)) The fans and blowers are not included in the enumerated list of covered products in section 6292(a) of EPCA and the Secretary has not previously determined such fans and blowers to be covered products, though DOE does regulate ceiling fans and furnace fans. Further, the definition of fans (*i.e.,* fans and blowers) established in this document explicitly excludes ceiling fans and furnace fans, both defined at 10 CFR 430.2. Therefore, equipment that is covered under the definition of ''fans'' (*i.e.,* fans and blowers'' established in this document are not covered products as that term is defined in 42 U.S.C. 6291(a)(2).

DOE concludes that the third element of ''industrial equipment'' is satisfied. (*See* 42 U.S.C. 6311(2)(A)(iii))

4. Coverage Necessary To Carry Out the Purposes of Part A–1

The purpose of Part A–1 is to improve the energy efficiency of electric motors, pumps, and certain other industrial equipment to conserve the energy resources of the Nation. (42 U.S.C. 6312(a)) In the 2011 NOPD, DOE initially determined that coverage of fans and blowers was necessary to carry out the purposes of Part A–1 of EPCA because coverage would potentially promote the conservation of energy

[25] U.S Department of Energy (January 2021), *United States Industrial and Commercial Motor System Market Assessment Report. Volume 1: Characteristics of the Installed Base.* Retrieved February 2, 2021, from *eta-publications.lbl.gov/sites/default/files/u.s._industrial_and_commerical_motor_system_market_assessment_report_vol_1_.pdf.*

[26] DOE notes that distribution for residential use does not preclude coverage as covered equipment so long as to a significant extent the equipment is of a type that is also distributed in commerce for industrial and commercial use.

[27] AHRI's submission to the CEC docket is available here: CEC Docket 17–AAER–06, TN#221201–1. Available at: *efiling.energy.ca.gov/GetDocument.aspx?tn=221201-1&DocumentContentId=26700.*

[28] For return and exhaust fans, DOE assumed an average of 0.06 to 0.85 fans per unit depending on the capacity of the unit instead of 0.5 to 1.5 fans per unit. See Table 6 of CEC Docket 17–AAER–06, TN#221201–1. Available at: *efiling.energy.ca.gov/GetDocument.aspx?tn=221201-1&DocumentContentId=26700.*

[29] The November 2016 NODA analyzed certain categories of fans with a fan shaft input power equal to or greater than 1 horsepower and fan air power equal or less than 150 horsepower as recommended in the term sheet. (Docket No. EERE–2013–BT–STD–0006; No. 179, Recommendation #1, 2, 3, 5, at pp.1–4)

resources. DOE estimated that technologies exist that could reduce the electricity consumption of fans by as much as 20 percent.[30] 76 FR 37678, 37680.

In response to the 2011 NOPD, the CA IOUs commented that commercial and industrial fans and blowers represent a significant potential for energy savings. To illustrate the potential energy savings, the CA IOUs presented estimates of how different blade designs compare in terms of energy efficiency, noting that some designs (*i.e.,* airfoil, backward curved/inclined centrifugal fans and vanaxial axial fans) are better than others. (CA IOUs, No. 6 at pp. 1–2)

In response to the June 2011 NOPD, AHRI commented that systems that includes commercial and industrial fans and blowers are already subject to DOE energy conservation standards. AHRI asserted that Part A–1's purpose has already been achieved through DOE's energy conservation standards for commercial equipment; the minimum energy efficiency requirements within these standards adequately account for the energy consumption of various components within a system, including fans and blowers. (AHRI, No. 3 at pp. 1–2) In response to the January 2013 Framework Document, AHRI added that setting energy conservation standards for fans and blowers used in HVAC applications would not ensure an optimized energy savings solution for this category of equipment and that ASHRAE Standard 90.1 already includes fan efficiency requirements for certain categories of HVAC fans. (Docket No. EERE–2013–BT–STD–0006; AHRI, No. 12 at p. 1) Also, in response to the January 2013 Framework Document, AMCA, EEI, Lennox, commented that DOE's analysis should account for the existing fan efficiency requirements in ASHRAE Standard 90.1. (Docket No. EERE–2013–BT–STD–0006; AMCA, No. 19 at pp. 5, 32; EEI, No. 13 at p. 2; Lennox, No. 18, at p. 3;) Ingersoll Rand/Trane noted that HVAC equipment that incorporate fans are already subject to minimum efficiency requirements in ASHRAE Standard 90.1. For fans going into these HVAC equipment, Ingersoll Rand/Trane commented that any improvements in the fan energy efficiency would not results in any energy savings as the HVAC equipment would continue to be designed to meet the equipment level metrics required by ASHRAE 90.1. (Docket No. EERE–2013–BT–STD–0006; Ingersoll Rand/Trane, No. 24, at p. 2) In response to the June 2011 NOPD, CTI also commented that much of the energy savings for standalone fans is already captured in ASHRAE 90.1 and in the International Energy Conservation Code. (CTI, No. 13, at p. 2)

In response to the May 2021 RFI, AHRI reiterated its concern that the data evaluated in DOE's previous NODA analyses used a fan database with fan performance characteristics that may not have appropriately represented embedded fans. (AHRI, No. 16.2, at p. 5) Greenheck recommended that DOE reevaluate the potential energy savings for fans based on the new fan energy requirements included in the 2019 version of ASHRAE 90.1, as well as savings obtained from ongoing utility incentive programs, related state energy standards/codes and industry performance certifications programs. (Greenheck, No. 18, at pp. 2, 3)

In the November 2016 NODA, DOE provided estimates of national energy savings that may result from potential energy conservation standards.[31] DOE analyzed six efficiency levels (''ELs'') representing lower efficiency fans (''baseline level''—EL0) and higher efficiency fans (''max tech''—EL6). To develop these efficiency levels, DOE identified existing technology options that affect efficiency. DOE then conducted a screening analysis to review each technology option and decide whether it: (1) Is technologically feasible; (2) is practicable to manufacture, install, and service; (3) would adversely affect product utility or product availability; or (4) would have adverse impacts on health and safety. The technology options remaining after the screening analysis consisted of a variety of impeller designs and guide vanes. DOE used these technology options to divide the fan groups into subgroups and conducted a market-based assessment of the prevalence of each subgroup at the different efficiency levels analyzed. DOE analyzed six efficiency levels in the November 2016 NODA, including one efficiency level representing the efficiency target as recommended by AMCA [32] as well as additional levels above and below. 81 FR 75742, 75748. DOE estimated that technologies exist that could reduce the electricity consumption of a baseline fan by as much as 30 percent,[33] resulting in national energy savings ranging from 0.79–6.96 quads site savings over the 30 year analysis period (2.2 to 19.1 quads Full Fuel Cycle) depending on the EL considered. (Docket No. EERE–2013–BT–STD–0006; National Impact Analysis Spreadsheet, No. 192)

Regarding ASHRAE Standard 90.1 and its effect on the current mix of fan and blower efficiencies on the market, DOE considered confidential sales data provided by AMCA in development of fan efficiency distributions for the November 2016 NODA. DOE collected additional technical and market information specific to embedded fans to represent both the embedded fan and standalone fan markets. DOE applied these efficiency distributions to account for the fact that more efficient fans are already on the market when estimating energy savings from potential energy conservation standards. 81 FR 75742, 75751–75752.[34] Further, since the publication of the November 2016 NODA, the industry standard in ASHRAE Standard 90.1 applicable to fans was revised to include updated fan efficiency requirements corresponding to approximately the stringency level in EL 3 as analyzed in the November 2016 NODA.[35] Because ASHRAE Standard 90.1 is approximately as stringent as EL 3 in the 2016 NODA analysis, the figures and analysis from the 2016 NODA can be used to determine remaining potential energy savings, assuming a full implementation of the fan requirements in ASHRAE 90.1. Even assuming full implementation of ASHRAE Standard 90.1, DOE estimates that there would remain a potential for additional energy savings ranging from 0.55–5.5 quads site energy savings (1.5 to 15.1 quads FFC energy savings) over the 30 year analysis period.[36]

The national energy savings results presented in the November 2016 NODA

[30] Martin, N., Worrel, E., et al. Emerging Energy Efficient Industrial Technologies, LBNL–46990, 10/2000.

[31] The national impact analysis tool and results supporting the November 2016 NODA are available online at *https://www.regulations.gov/document/EERE-2013-BT-STD-0006-0192*.

[32] See AMCA's DOE Fan efficiency Proposal presented at the 59th AMCA Annual Meeting, January 24, 2015.

[33] Based on the difference in fan efficiency targets at EL0 and EL6.

[34] The efficiency distributions reflect market shares of fan shipments by efficiency level in the absence of an energy conservation standard. In the November 2016 NODA, DOE assumed that some fans are already being purchased at efficiency levels above the baseline. See ''LCC Input'' tab of the national impact analysis tool (Row #39) Available at *https://www.regulations.gov/document/EERE-2013-BT-STD-0006-0192*.

[35] ANSI/ASHRAE/IES Standard 90.1–2019 (I–P), Energy Standard for Buildings Except Low-Rise Residential Buildings. Section 6.5.3.1.3 ''Fan efficiency''.

[36] To estimate these savings, DOE subtracted the national energy savings estimates at EL3 from the national energy savings estimates as projected by in the November 2016 NODA. The national impact analysis tool and results supporting the November 2016 NODA are available online at *https://www.regulations.gov/document/EERE-2013-BT-STD-0006-0192*.

and the subsequent estimates that assume full implementation of relevant industry standards demonstrate that coverage of fans and blowers and energy conservation standards that may result from such coverage would improve the efficiency of fans and blowers. Such standards would further the purpose of Part A–1, to conserve the energy resources of the Nation.

C. Final Determination

Based on the foregoing discussion, DOE concludes that including fans and blowers, as defined in this final determination, as covered equipment is necessary to carry out the purposes of Part A–1. Based on the information discussed in sections II.B.1, II.B.2, and II.B.3 of this final determination, DOE is classifying fans and blowers as covered equipment.

This final determination does not establish test procedures or energy conservation standards for fans and blowers. DOE will address test procedures and energy conservation standards through its normal rulemaking process.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This coverage determination has been determined to be not significant for purposes of Executive Order (''E.O'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). As a result, the Office of Management and Budget (''OMB'') did not review this final determination.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*https://energy.gov/gc/office-general-counsel*).

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. This final determination does not establish test procedures or standards for fans and blowers. On the basis of the foregoing, DOE certifies that this final determination has no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA for this final determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has analyzed this proposed action in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix A6 because it is strictly procedural and meets the requirements for application of a CX. See 10 CFR part 1021410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an Environmental Assessment or Environmental Impact Statement.

D. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735.

EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the industrial equipment that is the subject of this final determination. (42 U.S.C. 6316(a)(10); 42 U.S.C. 6297) Regarding equipment for which DOE has made a coverage determination pursuant to 42 U.S.C. 6311(1)(L) the preemption provisions of 42 U.S.C. 6297 begin on the date on which a final rule establishing an energy conservation standard is issued by the Secretary, except that any State or local standard prescribed or enacted for the equipment before the date on which the final rule is issued shall not be preempted until the energy conservation standard established by the Secretary for the equipment takes effect. (42 U.S.C. 6316(a)(10)) This final determination does not establish energy conservation standards for fans and blowers. DOE has examined this final determination and concludes that it does not preempt State law or have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final determination meets the relevant standards of E.O. 12988.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

This final determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by the private sector. As a result, the analytical requirements of UMRA do not apply.

G. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this final determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

I. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor Executive order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final determination is not establishing energy conservation standards for fans and blowers. It is not a significant energy action, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[37] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for developing energy conservation standards in the case of the present action.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final determination prior to its effective date. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final determination.

[37] ''Energy Conservation Standards Rulemaking Peer Review Report.'' 2007. Available at *www.energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.*

List of Subjects in 10 CFR 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

Signing Authority

This document of the Department of Energy was signed on August 13, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 13, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE amends part 431 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Add subpart J to read as follows:

Subpart J—Fans and Blowers

Sec.
431.171 Purpose and scope.
431.172 Definition.
431.173–431.176 [Reserved].

Subpart J—Fans and Blowers

§ 431.171 Purpose and scope.

This subpart contains provisions regarding fans and blowers, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6317. This subpart does not cover ''ceiling fans'' as that term is defined and addressed in part 430 this chapter, nor does it cover ''furnace fans'' as that term is defined and addressed in part 430 of this chapter.

§ 431.172 Definition.

Fan or *blower* means a rotary bladed machine used to convert electrical or mechanical power to air power, with an energy output limited to 25 kilojoule (kJ)/kilogram (kg) of air. It consists of an impeller, a shaft and bearings and/or driver to support the impeller, as well as a structure or housing. A fan or blower may include a transmission, driver, and/or motor controller.

§§ 431.173–431.176 [Reserved].

[FR Doc. 2021–17715 Filed 8–18–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 743, 748, 758, and 774

[Docket No. 210810–0160]

RIN 0694–AF47

Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule; technical corrections.

SUMMARY: On January 23, 2020, the Department of Commerce published a final rule in conjunction with a Department of State final rule to revise Categories I (firearms, close assault weapons and combat shotguns), II (guns and armaments), and III (ammunition/ordnance) of the United States Munitions List (USML) and transfer items that no longer warrant control on the USML in the International Traffic in Arms Regulations (ITAR) to the Commerce Control List (CCL). This final rule makes corrections and clarifications to the January 23 rule. The changes made in this final rule are intended to make the requirements easier to understand, interpreted consistently, and in accordance with the intent of the Commerce January 23 rule.

DATES: This rule is effective September 20, 2021.

FOR FURTHER INFORMATION CONTACT: Steven Clagett, Office of Nonproliferation Controls and Treaty Compliance, Nuclear and Missile Technology Controls Division, tel. (202) 482–1641 or email *steven.clagett@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 23, 2020, the Department of Commerce published the final rule, *Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML)* (85 FR 4136) (referred to henceforth as the ''Commerce January 23 rule'') in conjunction with a Department of State final rule to revise Categories I, II, and III of the USML in the ITAR (85 FR 3819) (referred to henceforth as the ''State January 23 rule''). The Department of Commerce in issuing the January 23 rule described how articles the President determined no longer warrant control under USML Category I—Firearms, Close Assault Weapons and Combat Shotguns; Category II—Guns and Armament; and Category III—Ammunition/Ordnance were to be controlled on the CCL of the Export Administration Regulations (EAR). The Commerce January 23 rule was published in conjunction with the State January 23 rule, issued by the Department of State, Directorate of Defense Trade Controls (DDTC), completing the initial review of the USML that began in 2011 and making conforming changes to the EAR to control these items on the Commerce Control List (CCL).

This final rule makes certain corrections and clarifications for the changes made in the Commerce January 23 rule. These changes are made to improve understanding of the 0x5zz Export Control Classification Numbers (ECCNs) for items that transitioned from USML Categories I and III to the CCL and to the associated control structure added to the EAR. These changes are informed by BIS's experience of licensing, classifying, and enforcing the export control requirements specific to these items. These changes are also informed by BIS's experience of conducting outreach and answering questions from the public on the changes made to the EAR in the Commerce January 23 rule. The changes made in this final rule are intended to make the requirements easier to understand, provide for consistent interpretation, and ensure the requirements are in accordance with the intent of the Commerce January 23 rule.

Corrections and Clarifications

In § 740.9(b) (Exports of items temporarily in the United States), this final rule removes the last sentence of the introductory text of paragraph (b)(1) and adds that same sentence as introductory text to paragraph (b). This

sentence applies to all of paragraph (b), and so needed to be placed in the introductory text of paragraph (b) instead of paragraph (b)(1) to clarify the scope of its application.

In § 742.17 (Exports of firearms to OAS member countries), this final rule revises the cross reference to § 748.12(d)(4) by updating that to reference paragraph (d)(3) instead of (d)(4). Paragraph (d)(4) does not exist and paragraph (d)(3) is what is intended in the described cross reference to § 748.12.

In § 743.4 (Conventional arms reporting), this final rule removes the penultimate sentence of paragraph (a). This final rule removes this sentence to conform with the clarification made to § 758.1(g)(4)(ii) that this requirement only applies when a filer is following the alternative submission method for conventional arms reporting.

In § 743.4, this final rule revises the second sentence of paragraph (h) to remove the phrase 'six character ECCN classification (*i.e.,* 0A501.a or 0A501.b)' and adds in its place the phrase 'items paragraph classification (*i.e.,* .a, or .b) for ECCN 0A501.' This change is made to conform with the change made to § 758.1(g)(4)(ii) to reduce the number of characters to be included in the Commodity description block to identify ECCN 0A501.a or .b firearms under the alternative submission method under paragraph (h).

In § 748.12 (Firearms import certificate or import permit), this final rule revises paragraph (b)(1) by removing the reference to supplement no. 6 to part 748. Previously, the second parenthetical phrase in paragraph (b)(1) caused confusion for some exporters by incorrectly referencing supplement no. 6, which is reserved. To avoid this confusion, this final rule clarifies § 748.12(b)(1) by removing the parenthetical phrase that refers to supplement no. 6 to part 748. As an additional conforming change, in supplement no. 6 to part 748, this final rule revises the supplement to remove the heading and bracketed text to avoid confusion for some exporters. This change is made to supplement no. 6 to part 748 because the heading and bracketed text is unnecessary for a reserved supplement. However, because part 748 includes supplement nos. 7 to 9, this final rule continues to reserve supplement no. 6, as a placeholder for future use.

In § 748.12(d) (Procedures for using document with license application), this final rule revises paragraph (d)(3) to add a new Note 2. New Note 2 clarifies that license applications for exports and reexports to an Organization of American States (OAS) member country must include the initial Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials (Firearms Convention) (FC) Import Certificate. This note also clarifies that all BIS licenses for ECCNs 0A501 and 0A505 commodities will include a standard rider that requires that the applicant/exporter have a current FC Import Certificate on file prior to export. The note clarifies that while FC Import Certificates are usually valid for 1 year, BIS licenses are valid for 4 years. This clarification addresses a common question that BIS has received regarding the validity period of FC Import Certificates as compared to the validity period of BIS licenses. This note clarifies that it is the responsibility of the exporter to have a current copy of the FC import certificate prior to making an export under the authorization of the license.

Also in § 748.12(e) (Requirement to obtain an import certificate or permit for other than OAS member states), this final rule adds a new Note 3 to paragraph (e)(3). New Note 3 clarifies the requirements for BIS license applications for ECCNs 0A501 and 0A505 commodities when the license application is not for exports to an OAS country. Note 3 clarifies that license applicants for exports and reexports to countries requiring that a government-issued certificate or permit be obtained prior to importing the commodity must have the initial government-issued certificate or permit prior to any export under BIS license. Note 3, similar to Note 2, notes the usual, shorter validity periods of government-issued certificate or permit compared to the four year validity period of BIS licenses and clarifies that the applicant/exporter must have a current government-issued certificate or permit on file prior to export under the license. The rider included on these licenses also addresses the scenario where if subsequently a foreign government decides a government issued certificate or permit is required, the existing license would already take that into account and require the exporter or reexporter to obtain the government-issued certificate or permit prior to making the export or reexport. Lastly, as a conforming change, this final rule redesignates Note 2 to paragraph (e) as Note 4 to paragraph (e).

In § 758.1 (The electronic export information (EEI) filing to the automated export system (AES)), this final rule revises paragraph (g)(4)(ii) (Identifying end item firearms by ''items'' level classification or other control descriptor in the EEI filing in AES), to make two clarifications. The first change clarifies that the requirement in paragraph (g)(4)(ii) is only applicable when an exporter will use the alternative submission method under § 743.4(h) for conventional arms reporting. BIS is making this change in response to questions from the public asking for clarification because they prefer using the standard method under § 743.4(h) or, as a result of how their software systems are set up for filing EEI in AES, that meeting the requirement under paragraph (g)(4)(ii) is not possible. This clarification will make it clear that when relying on the standard method, this additional EEI filing requirement in AES is not applicable. The second clarification that BIS makes is to shorten the text required in the commodity description block in the EEI filing in AES. Instead of requiring the six character ECCN classification (*i.e.,* 0A501.a or 0A501.b), or, for shotguns controlled under 0A502, the phrase '0A502 barrel length less than 18 inches,' filers will now be required, when relying on the alternative submission method, to insert '.a' or '.b' for 0A501, or 'SB' instead of '0A502 barrel length less than 18 inches'' in the commodity description block in the EEI filing in AES. This change is possible because the ECCN is already included in another block in the EEI filing in AES. BIS can therefore shorten the required text, which will assist filers by eliminating problems related to the limited number of characters allowed in the commodity description block, while continuing to allow BIS to identify the items as firearms and shotguns in the AES data.

In ECCN 0A018, this final rule removes the ECCN. No items are currently in this ECCN 0A018, so this change is limited to removing the heading and the cross reference to 0A505 for ''parts'' and ''components'' for ammunition that, immediately prior to March 9, 2020, were classified under 0A018.b. Because the January 23 rule has been effective for over one year, this cross reference is no longer needed.

In ECCN 0A501, this final rule makes thirteen changes to the control text for clarity. These changes include adding additional notes and technical notes, as well as other clarifications to the text to make the control parameters easier to understand and, therefore, interpreted consistently. These corrections and clarifications to 0A501 are described as follows:

This final rule adds a new Technical Note to 0A501.a. This technical note clarifies that the non-automatic and

semi-automatic firearms described in 0A501 includes those chambered for the Browning Machine Gun (BMG) cartridge.

This final rule revises 0A501.c to add the term 'striker' after the term 'hammers' in two places to indicate that the term is synonymous for purposes of this control parameter.

This final rule adds a new Technical Note to 0A501.c to clarify that barrel blanks that have reached a stage in manufacturing in which they are either chambered or rifled are controlled by 0A501.c.

This final rule revises 0A501.d to remove the phrase 'greater than 16 rounds' and add in its place the phrase '17 to 50 rounds' for clarity.

This final rule revises Note 2 to 0A501.d to add a cross reference to the USML to specify that magazines with a capacity greater than 50 rounds are controlled under USML Category I.

This final rule adds a new Note 3 to 0A501.e. This note clarifies that the term 'frames (receivers)' as used under 0A501.e refers to any ''part'' or ''component'' of the firearm that has or normally has a serial number when required by law. This new note also clarifies that the scope of 0A501.e for frames (receivers) is synonymous with a ''part'' or ''component'' that ATF regulates as a ''firearm.''

This final rule revises ECCN 0A501.y.1 by adding a parenthetical phrase after the term stocks to clarify that stocks include adjustable, collapsible, blades and braces. This final rule also adds the terms 'handguards' and 'forends' to ECCN 0A501.y.1 to clarify that stocks also include the handguard and the forend. Both of these amendments to ECCN 0A501.y.1 are clarifications, not additions to the parameters of the items controlled under the entry. As a conforming change to the addition of striker to ECCN 0A501.c, this final rule adds the term 'striker' after the term 'hammers' in the parenthetical phrase for the exclusions from 0A501.y.1.

This final rule removes and reserves ECCN 0A501.y.2 to .y.5. This change is made because the vast majority of items that would otherwise meet the control parameters under 0A501.y.2 to y.5 were subject to the EAR prior to March 9, 2020 (the effective date of the Commerce January 23 rule) and are designated as EAR99 on the basis of paragraph (b)(1) of ''specially designed.'' Based on BIS official classifications since January 23, 2020, no additional commodities have been identified that would warrant keeping these commodities in 0A501.y. Therefore, the items that are controlled under ECCN 0A501.y.2 to y.5 are those commodities that meet the control parameters and were moved to the EAR on March 9, 2020. However, the items identified as being classified under 0A501.y.2 to y.5 since January 23, 2020 have not substantively differed from the other items that were previously subject to the EAR and designated as EAR99. In addition, trying to keep track of which commodities are designated EAR99 and which are controlled in 0A501.y.2 to y.5 has created unneeded burdens on industry and the U.S. Government, so it is warranted to remove these .y paragraphs and treat these commodities all as EAR99.

This final rule adds a Technical note 2 to 0A501 to specify that for purposes of 0A501.e, receivers incorporating any other controlled ''part'' or ''component,'' such as a barrel under 0A501.c, remain controlled under 0A501.e. BIS has received questions from the public on the applicability of 0A501.e when a receiver incorporates a ''part'' or ''component'' from one of the items captured under other 0A501 paragraphs. This new Technical Note 2 to 0A501 will make the relationship between the different items under 0A501 clear.

This final rule revises Note 3 to 0A501 to redesignate the note as Note 4 to 0A501 and to add the word 'and' between the terms 'muzzle loading' and 'black powder.' This clarification is made because some muzzle loaders use black powder and some muzzle loaders use smokeless powder, and both are subject to the guidance in the Note.

The final rule in Note 4 to 0A501 redesignates the note as Note 5 to 0A501 and replaces the phrase 'later than' with the word 'post' for clarity. In addition, this final rule adds the word 'and' between the terms 'muzzle loading' and 'black powder' because, as noted above, some muzzle loaders use black powder and some muzzle loaders use smokeless powder, and both are subject to the guidance in the Note.

This final rule adds a new Note 6 to 0A501, as a conforming change to the removal of ECCN 0A501.y.2 to .y.5, to specify these ''parts'' and ''components'' previously controlled under 0A501.y.2 to y.5 are designated as EAR99. This note also eliminates the confusion regarding whether these ''parts'' or ''components'' are ''specially designed'' for purposes of 0A501.x.

This final rule adds a Note 7 to 0A501 to clarify how kits of commodities that contain ''parts'' and ''components'' with different classifications under 0A501 should be classified. This note clarifies that the kit should be classified based on the classification of the most restrictive ''part'' or ''component'' included in the kit. This guidance is based on existing BIS classification practice, but adding the new Note 7 to 0A501 will make this clear and hopefully reduce the number of questions that BIS receives specific to this issue. Note 7 to 0A501 also clarifies that a complete firearm disassembled in kit form is controlled as a firearm.

In ECCN 0A505, this final rule makes nine changes to the control text for clarity. These changes include adding additional notes, technical notes, or otherwise clarifying or adding text, *e.g.,* adding a new related definition, to make the control parameters easier to understand and interpreted consistently. These corrections and clarifications to 0A505 are as follows:

This final rule adds an ECCN-specific definition of 'marking rounds' in the Definitions paragraph in the List of Items Controlled section of ECCN 0A505. This definition clarifies that 'marking rounds' are non-lethal. The definition also clarifies what 'marking rounds' are typically used for and the types of materials used in 'marking rounds.'

This final rule revises ECCN 0A505.b to add the phrase 'any material' to the end of the parenthetical phrase that provides technical parameters for the types of buckshot controlled. The inclusion of the phrase 'any material' will clarify that 0A505.b controls plastic and rubber as well as metal buckshot that meet the control criteria, including the rubber/plastic (less lethal) buckshot rounds used by law enforcement. Also in 0A505.b, this final rule adds shotgun shells that contain only, or are for the dispersion of, chemical irritants to paragraph .b to clarify that such shells are controlled with buckshot shotgun shells under paragraph .b. This final rule removes shotgun shells containing only chemical irritants from ECCN 1A984 (as described further below) and adds them to 0A505.b where they will be controlled for crime control (CC Column 1), and United Nations (UN) reasons for control. Because of the controls required on shotgun shells containing only chemical irritants, it is more appropriate to control them under 0A505.b, where they will have the same level of control as they did under 1A984, than under 0A505.c.

This final rule removes Note 1 to ECCN 0A505.c. Note 1 is no longer needed because the shotguns shells previously controlled under 1A984 are being moved by this final rule to 0A505.b, eliminating the need for a cross reference to 1A984 in 0A505.c. As 0A505.c is controlled for UN and AT reasons only, it was not appropriate to move the shotgun shells from 1A984 to

0A505.c, because the level of control for 1A984 items is higher than the level of control for 0A505.c items. Therefore, this rule moves the shotguns shells from 1A984 to 0A505.b where they will continue to be controlled at the same level.

This final rule revises ECCN 0A505.d to add a reference to 0A502 to clarify that the blank ammunition controlled under 0A505.d includes blank ammunition for items controlled under 0A502, provided the ammunition is also not enumerated in USML Category III.

This final rule also revises ECCN 0A505.d to add a technical note to clarify that 'marking rounds' that have paint or dye as the projectile are controlled under 0A505.d. As noted above, this rule also added a Related Definition for 'marking rounds;' the new definition and this new technical note to 0A505.d will enhance understanding of the controls under 0A505 for 'marking rounds.'

This final rule revises ECCN 0A505.x to remove the reference to paragraph .d. The reference is redundant to the phrase 'or the CCL,' which includes 0A505.d.

This final rule redesignates Note 2 to 0A505.x, Note 3 to 0A505.x, and Note 4 0A505 as Note 1 to 0A505.x, Note 2 to 0A505.x and Note 3 to 0A505, respectively, as conforming changes to the removal of Note 1 to 0A505.c.

This final rule revises newly redesignated Note 1 to 0A505.x (prior to this rule designated as Note 2 to 0A505.x), to include, at the end of the note, the term 'frangible projectiles' after the phrase 'copper projectiles.' This change will clarify that the ''parts'' and ''components'' under 0A505.x include 'frangible projectiles.' Frangible projectiles are not made from a lead projectile covered with a copper jacket, but rather are produced with composite materials of tungsten, copper, or tin utilizing an injection molding or powder metallurgical production process.

This final rule revises newly redesignated Note 3 to 0A505 (prior to this rule designated as Note 4 to 0A505), by removing the word 'lead' from the term 'lead shot' and adding in its place the word 'metal.' This clarification to the control parameter addresses the fact that steel and bismuth shot are also used for hunting loads, so the control parameter should not be limited to lead as the only material. The use of the term 'metal shot' instead of 'lead shot' will clarify that other types of shot are also within the control parameter, as was intended by the Commerce January 23 rule. This final rule also revises the newly redesignated Note 3 to 0A505 to remove the term 'blank' and adds in its place the correct term 'drill.'

This final rule adds a new Note 4 to ECCN 0A505 to clarify the items paragraph under which shotgun shells that contain two or more balls/shot larger than .24-inch are controlled. This note clarifies that such shotgun shells are controlled under 0A505.b.

In ECCN 0B501, this final rule clarifies the control text of ECCN 0B501.d by deleting the word 'spill' in the phrase 'spill boring.' This final rule also adds the term 'reaming' before the term 'machines.' These changes do not change the intended scope of control. These changes are made for clarity and for consistency with BIS issued classifications for these types of machines.

In ECCN 0E505, this final rule makes a correction to the text in the RS Control paragraph in the License Requirements section. The phrase 'entire entry except' was inadvertently included in the RS Control paragraph in the Commerce January 23 rule, which created confusion regarding the intended scope of the RS license requirement. This final rule removes the unintended phrase 'entire entry except' from the RS license requirement to clarify the scope of the RS license requirement under ECCN 0E505.

In ECCN 1A984, this final rule revises the heading of 1A984 to remove the phrase 'unless the shotgun shells contain only chemical irritant' in the parenthetical phrase that follows the phrase 'and other pyrotechnic articles.' This final rule moves shotgun shells that contain only chemical irritants to ECCN 0A505.b, as described above under the description of changes of 0A505.b.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. Sections 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number.

This final regulation involves one collection currently approved by OMB under this collection and control number: The U.S. Census Bureau collection for the Automated Export System (AES) Program (control number 0607–0152). This final rule will also affect the information collection under control number 0607–0152, for filing EEI in AES because of one change this final rule makes to part 758 of the EAR. This rule revises § 758.1(g)(4)(ii) to shorten the information that is required to be included when relying on the alternative method for identifying end item firearms by ''items'' level classification or other control descriptor in the EEI filing in AES to make it easier to fit this identifying information in the Commodity description block in the EEI filing in AES. This change is not anticipated to result in a change in the burden under this collection.

Any comments regarding these collections of information, including suggestions for reducing the burden, may be submitted online at *https://www.reginfo.gov/public/do/PRAMain.* Find the particular information collection by using the search function and entering either the title of the collection or the OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are

not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Parts 740, 748, and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 740, 742, 743, 748, 758, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—LICENSE EXCEPTIONS

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 2. Section 740.9 is amended by:
■ a. Adding introductory text to paragraph (b); and
■ b. Removing the last sentence of paragraph (b)(1) introductory text.

The addition reads as follows:

§ 740.9 Temporary imports, exports, reexports, and transfers (in-country) (TMP).

* * * * *

(b) *Exports of items temporarily in the United States.* No provision of this paragraph (b), other than paragraph (b)(3), (4), or (5), may be used to export firearms controlled by ECCN 0A501.a, .b, or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502.

* * * * *

PART 742—CONTROL POLICY—CCL BASED CONTROLS

■ 3. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

■ 4. Section 742.17 is amended by revising paragraph (g) to read as follows:

§ 742.17 Exports of firearms to OAS member countries.

* * * * *

(g) *Validity period for licenses.* Although licenses generally will be valid for a period of four years, your ability to ship items that require an FC Import Certificate or equivalent official document under this section may be affected by the validity of the FC Import Certificate or equivalent official document (see § 748.12(d)(3) of the EAR).

PART 743—SPECIAL REPORTING AND NOTIFICATION

■ 5. The authority citation for part 743 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; 78 FR 16129.

■ 6. Section 743.4 is amended by removing the penultimate sentence of paragraph (a) introductory text and revising paragraph (h).

The revision reads as follows:

§ 743.4 Conventional arms reporting.

* * * * *

(h) *Alternative submission method.* This paragraph (h) describes an alternative submission method for meeting the conventional arms reporting requirements of this section. The alternative submission method requires the exporter, when filing the required EEI submission in AES, pursuant to § 758.1(b)(9) of the EAR, to include the items paragraph classification (*i.e.,* .a, or .b) for ECCN 0A501 as the first text to appear in the Commodity description block. If the exporter properly includes this information in the EEI filing in AES, the Department of Commerce will be able to obtain that export information directly from AES to meet the U.S. Government's commitments to the Wassenaar Arrangement and United Nations for conventional arms reporting. An exporter that complies with the requirements in § 758.1(g)(4)(ii) of the EAR does not have to submit separate annual and semi-annual reports to the Department of Commerce pursuant to this section.

* * * * *

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

■ 7. The authority citation for part 748 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2021, 86 FR 43901 (August 10, 2021).

■ 8. Section 748.12 is amended by:
■ a. Revising paragraphs (b)(1) and (d)(3);
■ b. Redesignating Note 2 to paragraph (e)(3) as Note 4 to paragraph (e)(3); and
■ c. Adding Note 3 to paragraph (e)(3).

The revisions and addition read as follows.

§ 748.12 Firearms import certificate or import permit.

* * * * *

(b) * * *

(1) Applicants must request that the importer (*e.g.,* ultimate consignee or purchaser) obtain the FC Import Certificate or an equivalent official document from the government of the importing country, and that it be issued covering the quantities and types of firearms and related items that the applicant intends to export. Upon receipt of the FC Import Certificate, its official equivalent, or a copy, the importer must provide the original or a certified copy of the FC Import Certificate or the original or a certified copy of the equivalent official document to the license applicant.

* * * * *

(d) * * *

(3) *Validity period.* FC Import Certificates or equivalent official documents issued by an OAS member country will be valid until the expiration date on the Certificate or for a period of four years, whichever is shorter.

Note 2 to paragraph (d)(3): Applicants for license applications for exports and reexports to an OAS member country must submit the initial FC Import Certificate with the license application. All BIS licenses for ECCNs 0A501 and 0A505 commodities will include a standard rider that requires that the applicant/exporter must have a current FC Import Certificate on file prior to export. Note that while FC Import Certificates are usually valid for 1 year, BIS licenses are valid for 4 years. The text of the standard rider will generally be as follows: ''A current, complete, accurate and valid Firearms Convention (FC) Import Certificate (or equivalent official document) shall be obtained, if required by the government of the importing country, from the Ultimate Consignee and maintained in the exporter's file prior to any export of the item(s) listed on this license. A copy shall

be provided to the U.S. Government upon request. (Refer to section 742.17(b) of the EAR for guidance.)''

(e) * * *

Note 3 to paragraph (e): Applicants for license applications for exports and reexports to countries requiring that a government-issued certificate or permit be obtained prior to importing the commodity must have the initial government-issued certificate or permit prior to any export. All BIS licenses for ECCNs 0A501 and 0A505 commodities will include a standard rider that requires that the applicant/exporter have a government-issued certificate or permit on file prior to export. Note that while government-issued certificates or permits are usually valid for 1 year, BIS licenses are valid for 4 years. The text of the standard rider will generally be as follows: ''A current, complete, accurate and valid Firearms Convention (FC) Import Certificate (or equivalent official document) shall be obtained, if required by the government of the importing country, from the Ultimate Consignee and maintained in the Exporter's file prior to any export of the item(s) listed on this license. A copy shall be provided to the U.S. Government upon request. (Refer to § 742.17(b) of the EAR for guidance.)''

* * * * *

Supplement No. 6 to Part 748 [Removed and Reserved]

■ 9. Supplement No. 6 to part 748 is removed and reserved.

PART 758—EXPORT CLEARANCE REQUIREMENTS

■ 10. The authority citation for part 758 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 11. Section 758.1 is amended by revising paragraph (g)(4)(ii) to read as follows:

§ 758.1 The Electronic Export Information (EEI) filing to the Automated Export System (AES).

* * * * *

(g) * * *

(4) * * *

(ii) *Identifying end item firearms by ''items'' level classification or other control descriptor in the EEI filing in AES.* For any export of items controlled under ECCNs 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, in addition to any other required data for the associated EEI filing when an exporter will use the alternative submission method under § 743.4(h) for conventional arms reporting, you must include the items paragraph classification (*i.e.,* .a, or .b) for ECCN 0A501, or for shotguns controlled under 0A502 the letters ''SB'' for short barrel length less than 18 inches as the first text to appear in the Commodity description block in the EEI filing in AES. (*See* § 743.4(h) of the EAR for the use of this information for conventional arms reporting).

* * * * *

PART 774—THE COMMERCE CONTROL LIST

■ 12. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

Supplement No. 1 to Part 774 [Amended]

■ 13. In Supplement No. 1 to part 774, Category 0, remove Export Control Classification Number (ECCN) 0A018.

■ 14. In Supplement No. 1 to part 774, Category 0, revise Export Control Classification Number (ECCN) 0A501 to read as follows:

0A501 Firearms (except 0A502 shotguns) and related commodities as follows (see List of Items controlled).

License Requirements

Reason for Control: NS, RS, FC, UN, AT

Control(s)	*Country chart (see supp. No. 1 to part 738)*
NS applies to entire entry except 0A501.y.	NS Column 1
RS applies to entire entry except 0A501.y.	RS Column 1
FC applies to entire entry except 0A501.y.	FC Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to entire entry.	AT Column 1

License Requirement Note: In addition to using the Commerce Country Chart to determine license requirements, a license is required for exports and reexports of ECCN 0A501.y.7 firearms to the People's Republic of China.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $500 for 0A501.c, .d, and .x.
$500 for 0A501.c, .d, .e, and .x if the ultimate destination is Canada.
GBS: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this entry.

List of Items Controlled

Related Controls: (1) Firearms that are fully automatic, and magazines with a capacity of greater than 50 rounds, are ''subject to the ITAR.'' (2) See ECCN 0A502 for shotguns and their ''parts'' and ''components'' that are subject to the EAR. Also see ECCN 0A502 for shot-pistols. (3) See ECCN 0A504 and USML Category XII for controls on optical sighting devices.
Related Definitions: N/A
Items:

a. Non-automatic and semi-automatic firearms equal to .50 caliber (12.7 mm) or less.

Note 1 to paragraph 0A501.a: 'Combination pistols' are controlled under ECCN 0A501.a. A 'combination pistol' (a.k.a., a combination gun) has at least one rifled barrel and at least one smoothbore barrel (generally a shotgun style barrel).

Technical Note to 0A501.a: Firearms described in 0A501.a includes those chambered for the .50 BMG cartridge.

b. Non-automatic and non-semi-automatic rifles, carbines, revolvers or pistols with a caliber greater than .50 inches (12.7 mm) but less than or equal to .72 inches (18.0 mm).

c. The following types of ''parts'' and ''components'' if ''specially designed'' for a commodity controlled by paragraph .a or .b of this entry, or USML Category I (unless listed in USML Category I(g) or (h)): Barrels, cylinders, barrel extensions, mounting blocks (trunnions), bolts, bolt carriers, operating rods, gas pistons, trigger housings, triggers, hammers/striker, sears, disconnectors, pistol grips that contain fire control ''parts'' or ''components'' (*e.g.,* triggers, hammers/striker, sears, disconnectors) and buttstocks that contain fire control ''parts'' or ''components.''

Technical Note to 0A501.c: Barrel blanks that have reached a stage in manufacturing in which they are either chambered or rifled are controlled by 0A501.c.

d. Detachable magazines with a capacity of 17 to 50 rounds ''specially designed'' for a commodity controlled by paragraph .a or .b of this entry.

Note 2 to paragraph 0A501.d: Magazines with a capacity of 16 rounds or less are controlled under 0A501.x; for magazines with a capacity greater than 50 rounds, see USML Category I.

e. Receivers (frames) and ''complete breech mechanisms,'' including castings, forgings, stampings, or machined items thereof, ''specially designed'' for a commodity controlled by paragraph .a or .b of this entry.

Note 3 to 0A501.e: Frames (receivers) under 0A501.e refers to any ''part'' or ''component'' of the firearm that has or is customarily marked with a serial number when required by law. This paragraph 0A501.e is synonymous with a ''part'' or ''component'' that is regulated by the Bureau of Alcohol, Tobacco, Firearms and

Explosives (see 27 CFR parts 447, 478, and 479,) as a firearm.

f. through w. [Reserved]

x. ''Parts'' and ''components'' that are ''specially designed'' for a commodity classified under paragraphs .a through .c of this entry or the USML and not elsewhere specified on the USML or CCL.

y. Specific ''parts,'' ''components,'' ''accessories'' and ''attachments'' ''specially designed'' for a commodity subject to control in this ECCN or common to a defense article in USML Category I and not elsewhere specified in the USML or CCL as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor.

y.1. Stocks (including adjustable, collapsible, blades and braces), grips, handguards, or forends, that do not contain any fire control ''parts'' or ''components'' (*e.g.,* triggers, hammers/striker, sears, disconnectors);

y.2 to y.5. [RESERVED]

y.6. Bayonets; and

y.7. Firearms manufactured from 1890 to 1898 and reproductions thereof.

Technical Note 1 to 0A501: The controls on ''parts'' and ''components'' in ECCN 0A501 include those ''parts'' and ''components'' that are common to firearms described in ECCN 0A501 and to those firearms ''subject to the ITAR.''

Technical Note 2 to 0A501: A receiver with any other controlled ''part'' or ''component'' (*e.g.,* a barrel (0A501.c), or trigger guard (0A501.x), or stock (0A501.y.1)) is still controlled under 0A501.e.

Note 4 to 0A501: Antique firearms (*i.e.,* those manufactured before 1890) and reproductions thereof, muzzle loading and black powder firearms except those designs based on centerfire weapons of a post 1937 design, BB guns, pellet rifles, paint ball, and all other air rifles are EAR99 commodities.

Note 5 to 0A501: Muzzle loading and black powder firearms with a caliber less than 20 mm that were manufactured post 1937 that are used for hunting or sporting purposes that were not ''specially designed'' for military use and are not ''subject to the ITAR'' nor controlled as shotguns under ECCN 0A502 are EAR99 commodities.

Note 6 to 0A501: Scope mounts or accessory rails, iron sights, sling swivels, and butt plates or recoil pads are designated as EAR99. These commodities have been determined to no longer warrant being ''specially designed'' for purposes of ECCN 0A501.

Note 7 to 0A501: A kit, including a replacement or repair kit, of firearms ''parts'' or ''components'' customarily sold and exported together takes on the classification of the most restrictive ''part'' or ''component'' that is included in the kit. For example, a kit containing 0A501.y and .x ''parts,'' is controlled as a 0A501.x kit because the .x ''part'' is the most restrictive ''part'' included in the kit. A complete firearm disassembled in a kit form is controlled as a firearm under 0A501.a, .b, or .y.7.

■ 15. In Supplement No. 1 to part 774, Category 0, revise Export Control Classification Number (ECCN) 0A505 to read as follows:

0A505 Ammunition as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, CC, FC, UN, AT

Control(s)	*Country chart (see supp. No. 1 to part 738)*
NS applies to 0A505.a and .x.	NS Column 1
RS applies to 0A505.a and .x.	RS Column 1
CC applies to 0A505.b.	CC Column 1
FC applies to entire entry except 0A505.d.	FC Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to 0A505.a, .d, and .x.	AT Column 1
AT applies to 0A505.c	A license is required for items controlled by paragraph .c of this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $500 for items in 0A505.x, except $3,000 for items in 0A505.x that, immediately prior to March 9, 2020, were classified under 0A018.b. (*i.e.,* ''Specially designed'' components and parts for ammunition, except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines (all of which are ''subject to the ITAR''). (See 22 CFR parts 120 through 130))

GBS: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0A505.

List of Items Controlled

Related Controls: (1) Ammunition for modern heavy weapons such as howitzers, artillery, cannon, mortars and recoilless rifles as well as inherently military ammunition types such as ammunition preassembled into links or belts, caseless ammunition, tracer ammunition, ammunition with a depleted uranium projectile or a projectile with a hardened tip or core and ammunition with an explosive projectile are ''subject to the ITAR.'' (2) Percussion caps, and lead balls and bullets, for use with muzzle-loading firearms are EAR99 items.

Related Definitions: 'Marking rounds' are non-lethal, typically used for training purposes, and contain a dye or paint in a capsule that is not a chemical irritant.

Items:

a. Ammunition for firearms controlled by ECCN 0A501 or USML Category I and not enumerated in paragraph .b, .c, or .d of this entry or in USML Category III.

b. Buckshot (No. 4 .24'' diameter and larger, any material) shotgun shells and shotgun shells that contain only, or are for the dispersion of chemical irritants.

c. Shotgun shells (including less than lethal rounds) that do not contain buckshot; and ''specially designed'' ''parts'' and ''components'' of shotgun shells.

d. Blank ammunition for firearms controlled by ECCNs 0A501 or 0A502 and not enumerated in USML Category III.

Technical Note to 0A505.d: Includes 'marking rounds' that have paint/dye as the projectile.

e. through w. [Reserved]

x. ''Parts'' and ''components'' that are ''specially designed'' for a commodity subject to control in this ECCN or a defense article in USML Category III and not elsewhere specified on the USML or the CCL.

Note 1 to 0A505.x: The controls on ''parts'' and ''components'' in this entry include Berdan and boxer primers, metallic cartridge cases, and standard metallic projectiles such as full metal jacket, lead core, copper projectiles, and frangible projectiles.

Note 2 to 0A505.x: The controls on ''parts'' and ''components'' in this entry include those ''parts'' and ''components'' that are common to ammunition and ordnance described in this entry and to those enumerated in USML Category III.

Note 3 to 0A505: Metal shot smaller than No. 4 Buckshot, empty and unprimed shotgun shells, shotgun wads, smokeless gunpowder, 'dummy rounds' and 'drill rounds' (unless linked or belted), not incorporating a lethal or non-lethal projectile(s) are designated EAR99. A 'dummy round' or 'drill round' is a round that is completely inert, (*i.e.,* contains no primer, propellant, or explosive charge). It is typically used to check weapon function and for crew training.

Note 4 to 0A505: Shotgun shells that contain two or more balls/shot larger than .24-inch are controlled under 0A505.b.

■ 16. In Supplement No. 1 to part 774, Category 0, revise Export Control Classification Number (ECCN) 0B501 to read as follows:

0B501 Test, inspection, and production ''equipment'' and related commodities for the ''development'' or ''production'' of commodities enumerated or otherwise described in ECCN 0A501 or USML Category I as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, UN, AT

Control(s)	Country chart (see supp. No. 1 to part 738)
NS applies to entire entry except equipment for ECCN 0A501.y.	NS Column 1
RS applies to entire entry except equipment for ECCN 0A501.y.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of all License Exceptions)

LVS: $3000
GBS: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used to ship any item in this entry.

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

a. Small arms chambering machines.
b. Small arms deep hole drilling machines and drills therefor.
c. Small arms rifling machines.
d. Small arms boring/reaming machines.
e. Production equipment (including dies, fixtures, and other tooling) ''specially designed'' for the ''production'' of the items controlled in 0A501.a through .x. or USML Category I.

■ 17. In Supplement No. 1 to part 774, Category 0, revise Export Control Classification Number (ECCN) 0E505 to read as follows:

0E505 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 0A505.

License Requirements

Reason for Control: NS, RS, UN, CC, AT

Control(s)	Country chart (see supp. No. 1 to part 738)
NS applies to ''technology'' for ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing commodities in 0A505.a and .x; for equipment for those commodities in 0B505; and for ''software'' for that equipment and those commodities in 0D505.	NS Column 1
RS applies to ''technology'' for ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing commodities in 0A505.a and .x; for equipment for those commodities in 0B505 and for ''software'' for those commodities and that equipment in 0D505.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
CC applies to ''technology'' for the ''development'' or ''production'' of commodities in 0A505.b.	CC Column 1
AT applies to ''technology'' for ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing commodities in 0A505.a, .d, and .x.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any ''technology'' in 0E505.

List of Items Controlled

Related Controls: Technical data required for and directly related to articles enumerated in USML Category III are ''subject to the ITAR''.
Related Definitions: N/A
Items: The list of items controlled is contained in this ECCN heading.

■ 18. In Supplement No. 1 to part 774, Category 1, revise Export Control Classification Number (ECCN) 1A984 to read as follows:

1A984 Chemical agents, including tear gas formulation containing 1 percent or less of orthochlorobenzalmalononitrile (CS), or 1 percent or less of chloroacetophenone (CN), except in individual containers with a net weight of 20 grams or less; liquid pepper except when packaged in individual containers with a net weight of 3 ounces (85.05 grams) or less; smoke bombs; non-irritant smoke flares, canisters, grenades and charges; and other pyrotechnic articles having dual military and commercial use, and ''parts'' and ''components'' ''specially designed'' therefor, n.e.s.

License Requirements

Reason for Control: CC

Control(s)	Country chart (see supp. No. 1 to part 738)
CC applies to entire entry.	CC Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2021–17647 Filed 8–18–21; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 117

[Docket ID: DoD–2020–OS–0045]

RIN 0790–AL41

National Industrial Security Program Operating Manual (NISPOM); Amendment

AGENCY: Office of the Under Secretary of Defense for Intelligence & Security, Department of Defense (DoD).

ACTION: Final rule; technical amendment.

SUMMARY: DoD is amending its NISPOM regulation to extend the implementation date for those contractors under DoD security cognizance to report and obtain pre-approval of unofficial foreign travel to the Department of Defense.

DATES: This rule is effective August 19, 2021.

FOR FURTHER INFORMATION CONTACT: Valerie Heil, 703–692–3754.

SUPPLEMENTARY INFORMATION: This final rule amends 32 CFR part 117, ''National Industrial Security Program Operating Manual (NISPOM)'' final rule that published in the **Federal Register** on December 21, 2020 (85 FR 83300). The rule includes reporting requirements for contractor personnel who have been granted eligibility for access to classified information through the National Industrial Security Program to follow

Security Executive Agent Directive (SEAD) 3, ''Reporting Requirements for Personnel with Access to Classified Information or Who Hold a Sensitive Position.'' Reporting requirements in the rule include provisions for covered individuals to report and obtain pre-approval of unofficial foreign travel. DoD received comments from regulated parties concerning how burdensome it would be for contractors under DoD security cognizance to submit individual foreign travel reports. Regulated parties recommended DoD modify its IT system so multiple or batched foreign travel reports can be submitted in a single submission. DoD agrees with this recommendation and intends to modify its IT system. However, DoD cannot complete modifications to its IT system before the original implementation date of August 24, 2021. This amendment will extend until August 24, 2022, the implementation date for those contractors under DoD security cognizance to report and obtain pre-approval of unofficial foreign travel to DoD to allow for the modifications to DoD's IT system to be completed. If a government contracting activity's (GCA) contract separately requires reporting or pre-approval of unofficial foreign travel (*i.e.,* contains a provision requiring such reports other than by incorporating the NISPOM), the contractor should consult with the GCA on when and where to submit such reports and the procedures for obtaining pre-approval.

Exception to Notice and Comment

This regulation can be effective immediately, notwithstanding the general requirement in the Administrative Procedure Act (APA) for advance notice and comment. Principally, this rule follows from a final rule with comment. This final rule is a logical outgrowth of the notice and comment incorporated in the prior final rule, because it is directly responsive to public comments made in response to the final rule. Several commenters specifically requested a delay in the August 24, 2021 implementation date. For example, one commenter stated that for contractors under DoD security cognizance, reporting foreign travel and foreign contacts will be impractical for companies of size without a mass or bulk upload capability that doesn't exist in the system as designed today. Further, the commenter stated this capability should be pursued and aligns with one of the stated goals of SEAD 3, which encourages ''automation and centralization.'' Even absent the prior notice and comment incorporated in the final rule, this rule would be exempt from the APA's notice-and-comment requirement, because it satisfies the good-cause exception in 553(b)(3)(B). Specifically, notice-and-comment rulemaking is ''unnecessary,'' *id.,* because as noted in the preamble, DoD already took comments on its NISPOM regulation and the regulated parties affected by the regulation requested that the Department change its IT system before they must report and obtain pre-approval of unofficial foreign travel to DoD. Indeed, DoD is amending the NISPOM regulation for the purpose of extending the implementation date at the request of the regulated parties affected by the rule who provided comments on the NISPOM regulation during a previous notice and comment period provided for the final rule. The need for this change to DoD's IT system was discovered in the comments received on the NISPOM regulation. While DoD desired to modify its IT system before the original implementation date to meet the requested change by the regulated parties, the Department discovered through the comment process that such modification is not feasible. DoD has therefore concluded that there is good cause to dispense with the advanced notice-and-comment rulemaking requirements in 5 U.S.C. 553.

Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is a significant regulatory action. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB) under the requirements of these E.O.s.

Congressional Review Act

This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

The Under Secretary of Defense for Intelligence and Security, pursuant to a delegation of authority from the Secretary of Defense, certifies that this final rule would not, if promulgated, have a significant economic impact on a substantial number of small business entities in accordance with the Regulatory Flexibility Act (5 U.S.C. 601) requirements since a contractor cleared legal entity may, in entering into contracts requiring access to classified information, negotiate for security costs determined to be properly chargeable by a Government Contracting Activity.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose any new information collection or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. This final rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Executive Order 13132, ''Federalism''

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a final rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 117

Classified information; Government contracts; USG contracts, National Industrial Program (NISP); Prime contractor, Subcontractor.

Accordingly, 32 CFR part 117 is amended as follows:

PART 117— NATIONAL INDUSTRIAL SECURITY PROGRAM OPERATING MANUAL (NISPOM)

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: 32 CFR part 2004; E.O. 10865; E.O. 12333; E.O. 12829; E.O. 12866; E.O. 12968; E.O. 13526; E.O. 13563; E.O. 13587; E.O. 13691; Pub. L. 108–458; Title 42 U.S.C. 2011 *et seq.;* Title 50 U.S.C. Chapter 44; Title 50 U.S.C. 3501 *et seq.*

■ 2. In § 117.1, paragraph (b)(3) is revised to read as follows:

§ 117.1 Purpose.

* * * * *

(b) * * *

(3) Prescribes that contractors will implement the provisions of this part no later than 6 months from February 24, 2021, with the exception of requirements for reporting foreign travel to the Department of Defense prescribed in SEAD 3 and implemented through this rule. Contractors under the security cognizance of the Department of Defense will begin reporting foreign travel to the Department of Defense no later than 18 months from February 24, 2021.

Dated: August 12, 2021.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–17688 Filed 8–18–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 269

[Docket ID: DOD–2016–OS–0045]

RIN 0790–AL18

Civil Monetary Penalty Inflation Adjustment

AGENCY: Office of the Under Secretary of Defense (Comptroller), Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is issuing this final rule to adjust each of its statutory civil monetary penalties (CMP) to account for inflation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 and for each year thereafter.

DATES: This rule is effective August 19, 2021.

FOR FURTHER INFORMATION CONTACT: Kellie Allison, 703–614–0410.

SUPPLEMENTARY INFORMATION:

Background Information

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461, note), as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, April 26, 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), Public Law 114–74, November 2, 2015, required agencies to annually adjust the level of CMPs for inflation to improve their effectiveness and maintain their deterrent effect. The 2015 Act required that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must adjust each CMP within its jurisdiction by the inflation adjustment described in the 2015 Act. The inflation adjustment is determined by increasing the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-of-living adjustment, rounded to the nearest multiple of $1. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index (CPI) for the month of October preceding the date of the adjustment, exceeds the CPI for the month of October in the previous calendar year.

The initial catch up adjustments for inflation to the Department of Defense's CMPs were published as an interim final rule in the **Federal Register** on May 26, 2016 (81 FR 33389–33391) and became effective on that date. The interim final rule was published as a final rule without change on September 12, 2016 (81 FR 62629–62631), effective that date. The revised methodology for agencies for 2017 and each year thereafter provides for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. The Department of Defense is adjusting the level of all civil monetary penalties under its jurisdiction by the Office of Management and Budget (OMB) directed cost-of-living adjustment multiplier for 2021 of 1.01182 prescribed in OMB Memorandum M–21–10, ''Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,'' dated December 16, 2019. The Department of Defense's 2021 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Defense after the effective date of the new CMP level.

Statement of Authority and Costs and Benefits

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies, effective 2017, to make annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodology used, effective 2017, for adjusting CMPs for inflation is established in statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department of Defense is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs.

Further, there are no significant costs associated with the regulatory revisions that would impose any mandates on the Department of Defense, Federal, State or local governments, or the private sector. Accordingly, prior public notice and an opportunity for public comment are not required for this rule. The benefit of this rule is the Department of Defense anticipates that civil monetary penalty collections may increase in the future due to new penalty authorities and other changes in this rule. However, it is difficult to accurately predict the extent of any increase, if any, due to a variety of factors, such as budget and staff resources, the number and quality of civil penalty referrals or leads, and the length of time needed to investigate and resolve a case.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action,'' and was not reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act (2 U.S.C. Chapter 25)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits

before issuing any rule the mandates of which require spending in any year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

The Department of Defense determined that provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 269

Administrative practice and procedure, Penalties.

Accordingly, 32 CFR part 269 is amended as follows.

PART 269—[AMENDED]

■ 1. The authority citation for 32 CFR part 269 continues to read as follows:

Authority: 28 U.S.C. 2461 note.

■ 2. In § 269.4, revise paragraph (d) to read as follows:

§ 269.4 Cost of living adjustments of civil monetary penalties.

* * * * *

(d) *Inflation adjustment.* Maximum civil monetary penalties within the jurisdiction of the Department are adjusted for inflation as follows:

TABLE 1 TO PARAGRAPH (d)

United States code	Civil monetary penalty description	Maximum penalty amount as of 02/21/20	New adjusted maximum penalty amount
National Defense Authorization Act for FY 2005, 10 U.S.C. 113, note.	Unauthorized Activities Directed at or Possession of Sunken Military Craft.	134,807	136,400
10 U.S.C. 1094(c)(1)	Unlawful Provision of Health Care	11,837	11,977
10 U.S.C. 1102(k)	Wrongful Disclosure—Medical Records:		
	First Offense	6,999	7,082
	Subsequent Offense	46,663	47,214
10 U.S.C. 2674(c)(2)	Violation of the Pentagon Reservation Operation and Parking of Motor Vehicles Rules and Regulations.	1,928	1,951
31 U.S.C. 3802(a)(1)	Violation Involving False Claim	11,665	11,803
31 U.S.C. 3802(a)(2)	Violation Involving False Statement	11,665	11,803
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(1).	False claims	20,866	21,112.64
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(1).	Claims submitted with a false certification of physician license	20,866	21,112.64
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(2).	Claims presented by excluded party	20,866	21,112.64
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(2); (b)(2)(ii).	Employing or contracting with an excluded individual	20,866	21,112.64
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(1).	Pattern of claims for medically unnecessary services/supplies	20,866	21,112.64
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(2).	Ordering or prescribing while excluded	20,866	21,112.64
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(5).	Known retention of an overpayment	20,866	21,112.64
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(4).	Making or using a false record or statement that is material to a false or fraudulent claim.	104,330	105,563.18
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(6).	Failure to grant timely access to OIG for audits, investigations, evaluations, or other statutory functions of OIG.	31,300	31,669.97
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(3).	Making false statements, omissions, misrepresentations in an enrollment application.	104,330	105,563.18
42 U.S.C. 1320a–7a(a); 32 CFR 200.310(a)	Unlawfully offering, paying, soliciting, or receiving remuneration to induce or in return for the referral of business in violation of 1128B(b) of the Social Security Act.	104,330	105,563.18

Dated: August 12, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–17675 Filed 8–18–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2021–0636]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone located in federal regulations for the annual D-Day Conneaut event. This action is necessary and intended for the safety of life and property on navigable waters during this event. During each enforcement period, no person or vessel may enter the safety zone without the permission of the Captain of the Port Buffalo.

DATES: The regulations in 33 CFR Table 165.939(c)(2) will be enforced from 1:15 p.m. through 6 p.m. each day from August 19, 2021, through August 21, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email MST2 Natalie Smith, Waterways Management Division, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–6004, email *D09-SMB-MSUCLEVELAND-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR Table 165.939(c)(2) for D-Day Conneaut, each day from 1:15 p.m. through 6 p.m. from August 19, 2021, through August 21, 2021. This action is being taken to provide for the safety of life on navigable waterways during this multi-day event.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or a designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Buffalo or her designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course. In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: August 9, 2021.

Lexia M. Littlejohn,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2021–17788 Filed 8–18–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0519]

RIN 1625–AA00

Safety Zone; SML Bridge Repairs, Portsmouth, NH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters on the Piscataqua River in Portsmouth, New Hampshire. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by cross-channel repair work on the submarine cables and removal of concrete cable mats on the Sarah Mildred Long Bridge in Portsmouth, NH. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Northern New England (COTP) or a Designated Representative.

DATES: This rule is effective without actual notice from August 19, 2021, through October 31, 2021. For the purposes of enforcement, actual notice will be used from September 1, 2021, until August 19, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0519 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Shaun Doyle, Sector Northern New England Waterways Management Division, U.S. Coast Guard; telephone 207–347–5015, email *Shaun.T.Doyle@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Northern New England
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish the temporary safety zone by September 1, 2021, for this unscheduled critical repair work and insufficient time exists to execute the full NPRM process. Additionally, delaying the effective date of this rule would be contrary to the public interest as it is necessary to establish this safety zone to protect personnel and vessels from hazards associated with submarine cable repairs and concrete mat removal on the Sarah Mildred Long Bridge.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with submarine cable repairs and concrete mat removal on the Sarah Mildred Long Bridge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Northern New England (COTP) has determined that potential hazards associated with submarine cable repairs and concrete mat removal starting September 1, 2021, will be a safety concern for anyone within a 100-yard radius of crane barges

and associated machinery conducting repairs to the Sarah Mildred Long Bridge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being repaired.

IV. Discussion of the Rule

This rule establishes a safety zone from September 1, 2021 through October 31, 2021. The safety zone will cover all navigable waters within a 100-yard radius of crane barges and associated machinery conducting repairs on the Sarah Mildred Long Bridge. The safety zone will be enforced during 4.5 hour periods around slack tide, either once or twice a day, on each prescribed day within the effective period listed above. During periods of enforcement, the Sarah Mildred Long Bridge will remain in the closed position and all vessels will be prohibited from transiting under the bridge. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the bridge is being repaired. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a Designated Representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone is only in effect for navigable waters within a 100-yard radius of crane barges and associated machinery conducting repairs on the Sarah Mildred Long Bridge. The safety zone will only be enforced during 4.5 hour periods around slack tide, either once or twice a day, on each prescribed day while the crane barge is on site and actively engaged in bridge repairs. Persons or vessels desiring to enter the safety zone may do so with the permission from the COTP or a Designated Representative. The Coast Guard will notify the public of the enforcement of this rule through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via VHF–FM marine channel 16.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone on the Piscataqua River that will prohibit entry within a 100-yard radius of crane barges and associated machinery being used by personnel to repair the Sarah Mildred Long Bridge. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01,

Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

■ 2. Add § 165.T01–0519 to read as follows:

§ 165.T01–0519 Safety Zone; SML Bridge Repairs, Portsmouth, NH.

(a) *Location.* The following area is a safety zone: All navigable waters of the Piscataqua River, from surface to bottom, within a 100-yard radius around crane barges and associated machinery conducting repairs on the Sarah Mildred Long Bridge.

(b) *Definitions.* As used in this section, *Designated Representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Northern New England (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's Designated Representative.

(2) To seek permission to enter, contact the COTP or the COTP's Designated Representative via VHF–FM marine channel 16 or by contacting the Coast Guard Sector Northern New England Command Center at (207) 741–5465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's Designated Representative.

(d) *Enforcement period.* This section is effective from September 1, 2021, through October 31, 2021, but will only be enforced during periods when bridge repairs are active. When enforced, the Sarah Mildred Long Bridge will remain in the closed position and all vessels will be prohibited from transiting under the bridge. The Coast Guard will notify the public of the enforcement of this rule through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via VHF–FM marine channel 16.

Dated: August 4, 2021.

A.E. Florentino,

Captain, U.S. Coast Guard, Captain of the Port Northern New England.

[FR Doc. 2021–17753 Filed 8–18–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0549]

RIN 1625–AA00

Safety Zone; New York Upper Bay, Pierhead Channel, and Port Jersey Channel, Bayonne, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of New York Upper Bay, Pierhead Channel, and Port Jersey Channel within 100 yards of the Bayonne Peninsula bulkhead. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by two building demolitions on shore. When enforced, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port of New York or a designated representative.

DATES: This rule is effective without actual notice from August 19, 2021, through October 31, 2021. For the purposes of enforcement, actual notice will be used from August 8, 2021 through August 19, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0549 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Jaison Kurian, Waterways Management Division, U.S. Coast Guard; telephone 718–354–4352, email *Jaison.Kurian@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to safeguard the public. Two brick and concrete rebar reinforced buildings (Numbers 32 and 42), six and one-half stories tall and located along the south shore of the Bayonne Peninsula are being demolished using land based explosives and immediate action is needed to respond to the potential safety hazards associated with this activity. It is impracticable to publish an NPRM because we must establish this safety zone by August 8, 2021. This rule is enforceable through October 31, 2021 as a contingency for any unforeseen delays or revisions to the building demolitions.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to protect the public from the potential safety hazards associated with this activity.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C 1231). The Captain of the Port New York (COTP) has determined that potential hazards associated with explosives demolition of two buildings on August 8, 2021, will be a safety concern for anyone within the waters of New York Upper Bay, Pierhead Channel, and Port Jersey Channel within 100 yards of the Bayonne Peninsula, New Jersey bulkhead. The rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the two buildings are being demolished.

IV. Discussion of the Rule

This rule establishes a safety zone from August 8 through October 31, 2021. The safety zone will cover all navigable waters within 100 yards of the Bayonne Peninsula, New Jersey. The zone will only be enforced during explosives loading and demolition of two onshore bulidings tentatively scheduled from 6:00 a.m. to 11:00 a.m. on Sunday, August 8, 2021. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the explosives are being loaded into the two buildings and the two buildings are being demolished. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, time of-day on a Sunday morning, and the duration of enforcement of the safety zone. The Port Authority of NY/NJ, demolition contractor, and the owner of the two buildings have coordinated the building demolitions with berth operators at the Bayonne Peninsula, New Jersey to minimize impacts. The Bayonne Golf Club, west of the safety zone, has also been notified and ferries transiting to the golf club will be authorized to transit through the 100 yard safety zone from 6 a.m. to 10 a.m. prior to the building demolitions. Vessels berthing at the Global Container Terminal, on the opposite side of Port Jersey Channel, will be outside of the safety zone and not expected to be impacted. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only five hours that will

prohibit entry within waters of New York Upper Bay, Pierhead Channel, and Port Jersey Channel within 100 yards of the Bayonne Peninsula, New Jersey bulkhead. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manul 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0549 to read as follows:

§ 165.T01–0549 Safety Zone; New York Upper Bay, Pierhead Channel, and Port Jersey Channel, Bayonne, NJ.

(a) *Location.* The following area is a safety zone: All navigable waters of New York Upper Bay, Pierhead Channel, and Port Jersey Channel, from surface to bottom, within 100 yards of the Bayonne Peninsula bulkhead bound by the following points beginning at 40°40′20.1″ N, 074°05′22.6″ W thence to 40°40′10.3″ N, 074°04′54.5″ W; thence to 40°39′49.9″ N, 074°04′06.1″ W; thence to 40°39′38.6″ N, 074°04′14.6″ W; thence to 40°39′59.4″ N, 074°05′08.2″ W; thence to 40°40′03.5″ N, 074°05′22.6″ W; thence to the point of origin at 40°40′20.1″ N, 074°05′22.6″ W. These coordinates are based on NAD 83.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subapart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF-Channel 16 or at 718–354–4353. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforecement period[s].* This section is effective from August 8 through October 31, 2021, but will only be enforced when building demoltion operations are in progress.

Dated: August 3, 2021.

Zeita Merchant,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2021–17751 Filed 8–18–21; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register

Vol. 86, No. 158

Thursday, August 19, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 800

[Doc. No. AMS–FGIS–19–0062]

RIN 0581–AD90

Exceptions to Geographic Boundaries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; request for comments.

SUMMARY: This notice of proposed rulemaking invites public input on proposed revisions to Federal Grain Inspection regulations. The Agricultural Marketing Service is required to revise the regulations as a result of 2018 Farm Bill amendments to the U.S. Grain Standards Act. Revised regulations would allow designated official agencies to perform grain inspections outside their geographic areas under certain additional conditions. Proposed revisions are based on industry input and are intended to provide additional flexibility to the industry.

DATES: Comments must be received by September 20, 2021.

ADDRESSES: Comments must be submitted through the Federal e-rulemaking portal at *http://www.regulations.gov* and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this document will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Sophie Parker, Deputy Director, Quality Assurance and Compliance Division, Federal Grain Inspection Service, AMS, USDA; email: *FGISQACD@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the USGSA (7 U.S.C. 71 *et seq.*), each official agencies (OA) in the United States is assigned a specific geographic area where it performs all official grain inspection and weighing services for customers within that geographic area (7 U.S.C. 79(f)(2)(A)). This ensures effective and efficient delivery of official services to all customers within the assigned OA's geographic area and enhances the orderly marketing of grain. The U.S. Grain Standards Act (USGSA) also provides that customers may obtain services from other OAs under certain circumstances. The Secretary may allow OAs to cross geographic boundaries to provide services to requesting customers if: (1) The assigned OA is unable to provide necessary services on a timely basis; (2) the customer has not been receiving official inspection services from the assigned OA; (3) the customer requests probe inspection on barge-lot basis; or (4) the assigned OA agrees in writing with the adjacent OA to waive the current geographic restriction at the customer's request (7 U.S.C. 79(f)(2)(B)). These allowances are considered exceptions to the USGSA's standard requirements regarding the use of designated OAs to perform inspection services within specified geographic areas. Exceptions must be approved on a case-by-case basis by the Agricultural Marketing Service's Federal Grain Inspection Service (FGIS) that administers regulations under the USGSA.[1] Regulations in 7 CFR part 800 provide limitations for use of these exceptions.

Service Exceptions

A notable exception that has been implemented in the past is known as the nonuse of service exception. In that exception, a customer who had not obtained inspection services from the assigned OA for a specified length of time could obtain services from another OA. At times, regulations required customers to have not used their designated OA for at least 90 consecutive days; at other times the regulations specified a 180-day nonuse period before the customer could apply for service from another OA. However, lack of clarity about how FGIS determined whether to grant nonuse of service exceptions fostered confusion and conflicts among involved parties and created a perception of inconsistency regarding the handling of such requests. Congress eliminated the nonuse of service exception from the USGSA in 2015;[2] FGIS subsequently removed that exception from the regulations.[3]

Although the nonuse of service exception was eliminated from the USGSA in 2015, Congress reinstated authority to implement a nonuse of service exception through an amendment to the USGSA in the 2018 Farm Bill.[4] FGIS must now consider regulatory options related to the reinstatement of the nonuse of service exception (see 7 U.S.C. 79(f)(2)(B)(ii)).

On April 1, 2020, FGIS published an advanced notice of proposed rulemaking (ANPR) (85 FR 18155) to solicit public comments on how FGIS should amend its criteria for reviewing, approving, and implementing exceptions to USGSA's requirements for geographic boundaries. FGIS received six comments on the ANPR. We have incorporated industry feedback from the ANPR, along with input received during industry meetings, to develop this proposed rule (PR). FGIS is requesting public comment on options for timely service and nonuse of service, as defined within this PR. Particularly, FGIS seeks input from industry participants and OAs who use and provide official services and are familiar with grain inspection services under the USGSA. We welcome the submission of data and other information to support commenters' views. As a result of public input received on the PR, FGIS will develop a final rule for publication in the **Federal Register**.

Restoration of Previous Nonuse of Service Exceptions

Subsequent to 2015 amendments to the USGSA and the 2016 changes to the FGIS regulations, a number of nonuse of service exceptions were terminated. The 2018 Farm Bill directed USDA to allow for restoration of those exceptions where appropriate. Interested parties were given an opportunity to submit restoration requests to FGIS, as

[1] FGIS, formerly part of USDA's Grain Inspection, Packers and Stockyards Administration, was merged with USDA's Agricultural Marketing Service in 2018.

[2] The Agricultural Reauthorizations Act of 2015, enacted September 20, 2015 (Pub. L. 114–54 sec. 301(b)(3)(A)).

[3] 81 FR 49855, July 29, 2016.

[4] The Agricultural Improvement Act of 2018, enacted December 20, 2018 (Pub. L. 115–334 sec. 12610(a)(1)(D)).

described in a Notice to Trade published on March 5, 2019.[5]

Termination of Nonuse of Service Exceptions

The amended USGSA provides that the nonuse of service exception may only be terminated if all parties to the exception jointly agree on the termination.[6] This means that the customer, the assigned OA, the OA that has been providing service under the exception (gaining OA), and FGIS must agree to terminate the exception. This ensures that: (1) All parties are aware of the change and (2) the assigned OA will resume providing service to the customer.

The requirement for all parties to the exception to jointly agree on termination of the nonuse of service exception does not apply if the designation of an OA is terminated.[7] If the designation of an OA is renewed or restored after being terminated, the exceptions that were previously approved, under 7 U.S.C. 79(f)(2)(B), may be renewed or restored by requesting a determination from FGIS.

Comment Review

The ANPR suggested three criteria for timely service exceptions and four criteria for nonuse of service exceptions, and requested input on 11 questions regarding factors that could impact decisions on exceptions. FGIS would like to thank those who participated in this process for providing valuable input. Not all commenters provided feedback on criteria for every exemption or on every question in the ANPR. Most recognized the need for the official system to be customer focused and to provide timely and accurate services.

FGIS received mixed comments about timely service and nonuse of service exceptions. Some commenters stated that they thought the nonuse of service exception involved the inability of the OA to provide timely service. The USGSA specifies these are two separate exceptions; therefore, FGIS is using the feedback to the ANPR to improve and clarify the requirements under the appropriate exception.

The ANPR criteria for timely service exceptions included that: the requesting facility would be required to submit a written or verbal request for an exception to FGIS, along with documentation regarding the designated OA's inability to provide service within six hours from the requested service. Further, the OA would have to be unable to provide requested services within timeframes established in the OA's approved fee schedule. The ANPR criteria for nonuse of service exception requests included the requesting facility (customer or applicant) demonstrating they have not received official services for 90 days, documenting why they have not received service, and providing a written or verbal request for an exception. In addition, the ANPR suggested potential factors for consideration, some of which now fit within the expanded criteria for timely service requests.

In the feedback to the ANPR criteria for timely service exceptions, some commenters supported the criteria but provided differing opinions on how to apply the criterion regarding timeframes for services provided. One suggested that customers should not be allowed to routinely call their OA after business hours as a mechanism for obtaining service from another OA. Here, FGIS notes parameters required for requesting official services are defined in 800.116(b) and OA fee schedules. FGIS also received requests to clarify which services are included in a timely service exception. Industry feedback indicates some OA's do not offer all official services some customers request. Others indicate that weather events could impact access to timely service. Timely service exceptions criterion in this PR would provide an avenue to accommodate these situations.

In the feedback to the ANPR criteria for nonuse of service exceptions, some commenters asked FGIS to add flexibility to the nonuse of service exception and to rename it ''service exception''. According to industry input, customers occasionally face limitations in the types of services offered by the assigned OA. This again indicated to FGIS that there is confusion about the criteria for timely service and the criteria for nonuse of service exceptions. In addition, the feedback on the number of days without official service (for nonuse of service exceptions) had a wide range, from 30 to 180 days. As stated in the ANPR, prior ranges allowed were between 90 to 180 days in length. A period of 90 days is within timeframes used for the nonuse of service exception in the past and is a compromise based on timeframes suggested in the comments.

In the general feedback to the ANPR, FGIS received comments expressing concern that some requests for exceptions relayed false or misleading information. These comments questioned how FGIS would validate requests for exceptions and whether the assigned OA would have an opportunity to respond to the request. Therefore, FGIS proposes adding a validation process for requests for exceptions. This would allow all parties to submit information and data regarding the request. FGIS would review information and assess requests to ensure the integrity of the official system is maintained. FGIS also received feedback expressing concern that nonuse of service exceptions negatively impact the integrity of the official system. FGIS has attempted to address all feedback within this PR.

Overview

Amendments proposed would modify parameters for the exceptions program for timely service and reinstate the exception program for nonuse of service in 7 CFR 800.117, to comply with amendments made to the USGSA in the 2018 Farm Bill. This PR incorporates feedback received from the public on the ANPR to create a clear, consistent, and fair framework for considering and granting these exceptions, which allow designated OAs to perform grain inspections outside their geographic areas under certain conditions. Timely service and nonuse of service are two of those conditions. This PR defines and differentiates between timely service and nonuse of service exceptions and their associated requirements.

Under § 800.117(b)(1), the industry would have a mechanism to request and receive timely service from an alternate OA. Applicants could also request timely service exceptions for delays caused by weather events and requests for services that are not offered by the assigned OA. For a timely service exception, FGIS would grant an exception when: (1) The designated OA is unable to provide services to an applicant within 6 hours or the OA is unable to provide results and certificate in accordance with 800.160(c); or (2) a request for services not offered by the assigned OA would result in an inability to receive timely service; or (3) a weather event or impact caused by a weather event results in an inability to receive timely service from the assigned OA; and (4) granting an exception is in the best interest of the integrity of the official system. It is important to note that not all of these instances indicate a delay caused by the assigned OA and that the reasons and justification for the exception request weigh more prominently for nonuse of service requests than timely service. This PR proposes a tiered progression for timely service exceptions. The first is a one-time timely service exception. In the

[5] Restoring Certain Exceptions to the U.S. Grain Standards Act, published March 5, 2019. *https://www.ams.usda.gov/content/restoring-certain-exceptions-us-grain-standards-act.*

[6] Public Law 115–334 sec. 12610(a)(1)(E).

[7] Public Law 115–334 sec. 12610(a)(2).

case of untimely service, the ability to use another official agency may be granted for the next service request, as applicable. The second is a 90-day timely service exception. If, after the first request is granted, a second instance occurs within 180 days, the customer may apply for a 90-day exception. Once granted, the alternate OA would provide services to the customer for 90 days. The third is a long-term timely service exception. If there is another occurrence, within 365 days of the return to the assigned OA, the applicant may request a long-term exception, extending until the termination date of the gaining agency's designation. If FGIS determines the assigned OA's inability to provide a specific service, limited due to weather events or service availability, has been resolved, FGIS may terminate the long-term exception. If FGIS terminates a long-term exception, all parties would be notified, and the applicant would resume service with the assigned OA within 60 days of notification. However, if the exception was associated with the assigned OA's inability to provide service in 6 hours or less, or timely issuance of the results and certificate, FGIS may not terminate the exception. During the duration of exceptions caused by a failure of the assigned OA to supply timely service, the assigned OA should work on improving their ability to provide the requested services.

For nonuse of service exception requests, this PR defines the period of nonuse as 90 days. The PR also specifies, *but does not limit,* categories FGIS would take into consideration when reviewing requests for nonuse of service exceptions. These include: (1) The location of the specified service point(s); (2) the ability of the alternate OA to take on additional customers; (3) the ability of the assigned OA to staff an onsite laboratory; (4) whether the requesting facility has ever previously utilized the official system (*i.e.,* facilities that have never used the official system would not qualify for nonuse of service exception, nor would a facility that was under new ownership by a company with no history of use of the official system). For a nonuse of service exception, FGIS would grant an exception when: (1) An OA has not provided service to an applicant within their assigned geographic area within the established time period, (2) FGIS receives a request for a nonuse of service exception from an applicant, and (3) granting an exception is in the best interest of the integrity of the official system. In some cases, the cost of the equipment is more than the OA would be able to recoup, due to the infrequency of the requests. FGIS would take these factors into consideration when reviewing requests for exceptions and would work with the OAs and customers to find a solution.

FGIS recognizes there may be instances where granting an exception may impact the assigned OA's viability and instances where there is concern about the integrity of the official system. In such instances, FGIS proposes adding a challenge process into this regulation. As an example, FGIS would consider factors such as percent of business or percent of customers lost due to 90-day and long-term exceptions. Requests for a challenge must clearly state and support the identified reason for the request. The assigned OA must include supporting documentation for FGIS to review as part of this process. FGIS seeks input from industry participants and OAs on the challenge process. We welcome and encourage the submission of data and other information to support commenters' views.

FGIS proposes to add the nonuse of service exception back into the regulations, under § 800.117(b)(2). The industry would be able to apply for official services from an alternate OA if they have not received official services within the previous 90 days. In addition, FGIS proposes to evaluate criteria defined in the section to promote clarity, consistency, and transparency. FGIS also proposes to expand and clarify options for exceptions under timely service. Applications for timely service exceptions would undergo a more streamlined approval process and require less rigorous justification by the applicant than those submitted for nonuse of service exceptions. For both types of exceptions, the PR establishes processes to address assigned OA concerns of potentially false or misleading exception requests and validation of requests by FGIS.

Executive Orders 12866 and 13563

Executive Orders 12866—Regulatory Planning and Review, and 13563—Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, harmonizing rules, and promoting flexibility.

In this initial evaluation of costs and benefits of the rule, FGIS has determined that the proposed rule does not meet the criteria of a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Moreover, FGIS finds that the rule does not create any new material costs for industry.

Baseline

Under the USGSA, the USDA regulates the inspection of barley, canola, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sunflower seed, triticale, and wheat. This rule impacts the 42 OAs that provide USDA-regulated grain certification and the 5,218 commercial entities they serve. In FY2020, OAs performed 3,093,261 grain inspections of 240.3 million metric tons of grain.[8] FGIS expects fewer than one percent of the entities served by OAs to request and be granted exceptions under the rule.

Official inspection costs represent a very small percentage of the total value of grain shipment. In 2018, FGIS calculated weighted average costs for inspections for different carriers as follows: $24.50 for a semi-truck capable of carrying 58,000 pounds, $24.65 for a railcar capable of carrying 220,000 pounds, and $234.42 for a barge capable of carrying 3,000,000 pounds of grain. For example, if the price of wheat was $5 for a 60-pound bushel, the cost of the inspection would represent 0.53% of the revenue for a truck, 0.13% of the revenue for a railcar train, and 0.08% of the revenue for a barge.

Need for the Rule

Federally regulated grain inspection is designed to remedy two competing sources of market failure—asymmetric information and market power—while preserving the ability of small producers to access markets. This rule increases the flexibility of the existing inspection program without affecting the program's quality standards or the ability of small sellers to access inspection services. Greater flexibility in allowing producers to obtain inspection services, however, will save costs and provide them greater ability to meet potential market opportunities.

Many agricultural products, including grain, vary in important quality characteristics due to both farm production decisions and idiosyncratic factors. In the absence of a quality verification process, sellers in transactions may have more knowledge

[8] Source: USDA Federal Grain Inspection Service (FGIS) Program Data at: *https://fgisonline.ams.usda.gov/F_DEC/AnnualReport.aspx.*

of product quality than buyers, a condition called asymmetric information. Akerlof (1970) showed asymmetric information can cause economic inefficiencies in which producers forego investments that are less costly to implement than the benefit they provide consumers.[9] Third-party inspection that verifies a product's quality resolves this source of market failure.

Grain inspectors certify the protein content, kernel size, and other quality factors related to product's market value to simplify transactions. Since the outcome of grain inspections directly affects the sale price, biases and inconsistences in inspection methods might potentially redistribute the gains to trade from seller to buyer, or vice versa. Market power might exacerbate the tendency to bias and inconsistency if, for instance, large sellers or buyers can influence the outcome of quality inspections in their favor. In addition to fairness concerns, such opportunistic behavior creates economic inefficiencies by reducing returns on investment in quality improvement and creating costs for downstream producers (*i.e.,* bakers and food processors) expecting products of certain quality.

Grain inspection is an optional service. When information asymmetries are a concern, inspection facilitates simpler, more rapid, and less risky transaction of final product. By allowing producers to recoup the costs of quality improvement, grain inspection also encourages investment in quality improvement.

Under its regulatory authority, the USDA approves grain inspection standards and monitors their uniform application by OAs. To promote a competitive market for grain, in which all producers have access to inspection services, FGIS requires that OAs provide inspection services to all producers in an assigned area and regulates marketing fee schedules charged by OAs for these services. FGIS approves rates to cover various labor, laboratory, and travel costs and only approves differential rates across geographic areas if underlying costs differ across assigned regions. For this reason, FGIS does not expect this rule to impact the prices paid by inspection users or the fees received by OAs. Instead, FGIS expects this rule will allow the small fraction of inspection users who need ''timely service'' and ''nonuse of service'' exceptions greater flexibility in obtaining inspections services to meet immediate business requirements.

Benefits and Costs of the Rule

FGIS considers economic benefits of this rule as being three-fold. First, the rule provides clarity to producers regarding the terms under which exceptions are granted. Second, the rule increases options to producers who require inspection services to market their grain. FGIS expects that this option will be utilized by fewer than one percent producers who need inspections services quickly but face service constraints by OAs. Third, the rule may heighten attention to service issues among OAs that have received nonuse of service exception requests. The validation process FGIS will maintain as part of the granting of exceptions will ensure requests serve a valid business purpose. OAs may offer additional services such as a broader range of testing as a result.

FGIS does not ascribe any direct compliance costs to either OAs or producers as a result of the potential increase for timely service and nonuse of service exceptions under this rule. FGIS does not expect that inspection fees it approves will change as a result of this rule. To the extent that this rule provides greater flexibility to how producers can obtain inspection services, it will provide improved services or reduce total costs to producers by, for instance, allowing those needing immediate inspections to get them from an OA other than the one to which they are assigned. Moreover, FGIS does not believe the rule will create significant indirect costs, aside from minor costs to market participants learning the rule and documenting exceptions.

To the extent that some OAs conduct fewer inspections because producers in their assigned area have requested more exceptions, other OAs will conduct more inspections. FGIS believes that any business losses to an OA will be small and that any losses will be offset by gains to other OAs. This rearrangement of business activity constitutes a transfer of benefits from one OA to another and has a neutral effect on total costs and benefits of the rule.

To summarize, FGIS believes that the total impact of the rule on the grain inspection industry is not economically significant and that the benefits of this rule exceed its costs, which are negligible.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the impact of their rules on small entities and to evaluate alternatives that would accomplish objectives of the rule without unduly burdening small entities when rules impose a significant economic impact on a substantial number of small entities. This rule has an economic impact on farms selling grain that require inspections (classified under North American Industry Classification System, or NAICS, codes 111110, 111120, 111130, 111140, 111150, 111191, 111160, 111191, and 111199), grain elevators and grain certifiers that conduct post-harvest crop activities (NAICS code 115114) and either require or perform inspections. The Small Business Administration (SBA) considers grain farms to be small if their sales are less than $1 million and grain elevators and grain certifiers (OAs) to be small if their sales are less than $30 million (13 CFR 121.201).

FGIS certifies that this rule does not have a significant economic impact on small businesses. This determination is made based on FGIS's expectation that any small entities requiring grain inspection, including grain farms and grain elevators, or entities performing grain inspection, including OAs, will see neither a change in prices paid or fees charged nor a loss in access to inspection services or change in territorial boundaries for which they can perform inspections. Further, FGIS believes its proposed challenge process addresses the concern that some small OAs may lose economic viability when exceptions are granted to customers under the exceptions to geographic boundary requirement.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988—Civil Justice Reform. This rule is not intended to have retroactive effect. The USGSA provides in sec. 87g that no State or subdivision thereof may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act.

This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. No administrative proceedings would be required before parties could file suit in court challenging the provisions of this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175

[9] George Akerlof, ''The Market for Lemons: Quality Uncertainty and the Market Mechanism'' *Quarterly Journal of Economics,* 1970.

requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on: (1) Policies that have tribal implications, including regulations, legislative comments or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Agricultural Marketing Service (AMS) has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about proposed changes to regulations will be shared during an upcoming quarterly call, and tribal leaders will be informed about proposed revisions to the regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the proposed regulations.

AMS has provided 30 days for comments on this proposed rule. All comments received by September 20, 2021 will be considered prior to finalizing this proposed rule. Comments in response to any or all of the above processes or proposed wording should be submitted to the address provided in the **ADDRESSES** section of this document to ensure consideration.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Exports, Grains, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, FGIS proposes to amend 7 CFR part 800 as follows:

PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 2. Amend § 800.117 by:
■ a. Adding paragraph (b) introductory text;
■ b. Revising paragraph (b)(1);
■ c. Redesignating paragraphs (b)(2) and (3) as paragraphs (b)(3) and (4), respectively; and
■ d. Adding new paragraph (b)(2).

The additions and revision read as follows:

§ 800.117 Who shall perform original services.

* * * * *

(b) *Exceptions for official agencies to provide service.* Under an exception, an official agency may provide service to a customer outside of their geographic area. The applicant must request that the Service grant an exception. As outlined below, the Service may grant an exceptions in instances when: The assigned official agency is unable to provide inspection services in a timely manner; a person requesting inspection services in that geographic area has not been receiving official inspection services from the official agency for that geographic area; a person requesting inspection services in that geographic area requests a probe inspection on a barge-lot basis; or, the assigned official agency for that geographic area agrees in writing with the adjacent official agency to waive the current geographic area restriction at the request of the applicant for service.

(1) *Timely service.* The Service grants an exception when service is not timely as described in this section. Service is not timely when an official agency cannot provide requested official services within 6 hours or cannot provide results and certificate in accordance with 800.160(c). Applicants may also request timely service exceptions for delays caused by weather events or request a timely service exception for services that the assigned official agency does not offer. The applicant must submit a request for a timely service exception to the Service. The applicant may make this request orally or in writing. The applicant must clearly state and support the identified reason for the requested exception. There are three consecutive tiers of timely service exceptions: One-time, 90-day, and long-term. Applicants must progress through each tier. Applicants must apply for and the Service must approve a one-time exception before the Service considers a 90-day exception. Likewise, applicants must apply for and the Service must approve a 90-day exception before the Service will consider a long-term exception. The Service will review requests and may contact the applicant, the assigned official agency, or potential gaining agency with questions during its review. The Service will provide its determination on the exception request to the customer in writing.

(i) *One-time.* In the case of untimely service, the ability to use another official agency may be granted for the next service request, as applicable.

(ii) *90-day.* If there is an occurrence of untimely service within 180 days of the date of the occurrence in paragraph (b)(1)(i) of this section, the applicant may request a 90-day exception. This 90-day window will begin the day the exception is granted.

(iii) *Long-term.* If after a return to service following an exception granted under paragraph (b)(1)(ii) of this section there is another occurrence of untimely service within 365 days, the applicant may request a long-term exception. When granting this exception, the Service may extend this exception up to the date of termination of the gaining agency's designation term.

(iv) *Supporting Documentation.* The applicant must submit a request for a timely service exception and associated supporting documentation to the Service. The Service will give all parties an opportunity to provide information. The Service will request additional information if any is needed.

(v) *Review and Validation.* Prior to granting a timely service exception, the Service will review and validate all information submitted with the application. If the request is urgent and made outside of the Service's normal business hours, an official agency from outside the geographic area may provide service. When providing an urgent service, the official agency must provide written notification to the Service within two business days after service. The Service will review and validate the circumstances of the urgent request and the Service will verify that the request was not false or misleading.

(vi) *False or Misleading Requests.* If an applicant submits a request that the Service determines to be false or misleading, the Service will not grant the exception. If an urgent request was granted on the basis of a false and misleading request, the Service may deny the applicant from future urgent timely service exceptions for a period of up to 180 days.

(vii) *Return to the Assigned Official Agency.* The applicant maintains the option of returning to the assigned official agency at any time with a 60-day notification period to all parties. The exception will be cancelled, and future exception requests will be considered at the beginning of successive-tiered system.

(viii) *Termination.* If the Service determines the original official agency's inability to provide a specific service, limited due to weather events or service availability, has been resolved, the Service may terminate the long-term exception. However, if the exception

was associated with the official agency's inability to provide service in 6 hours or less, or timely issuance of the results and certificate, the Service may not terminate the exception. If the Service terminates a long-term exception, all parties will be notified, and the applicant will resume service with the assigned official agency within 60 days of notification.

(2) *Nonuse of service exception.* If an applicant has not received service from the assigned official agency within the last 90 days, the applicant may request that the Service grant a nonuse of service exception.

(i) Requests must clearly state and support the following:

(A) The last date of service from assigned official agency;

(B) The reason service has not been received during this timeframe;

(C) The identified reason for the request.

(ii) *Relevant information.* Applicants may submit *any* relevant supporting information. This may include, but is not limited to:

(A) The location of the specified service point(s);

(B) The types of services requested by the applicant and offered by assigned official agency;

(C) The ability of the gaining official agency to take on additional customers;

(D) The ability of the assigned official agency to provide the requested service;

(E) Whether the requesting facility has ever used the official system.

(iii) *Supporting Documentation.* Included with the request for an exception, the applicant must submit supporting documentation to the Service. After receipt of the request, the Service will give all parties an opportunity to provide additional supporting documentation. The Service will request additional information if any is needed.

(iv) *Review and Validation.* Prior to granting an exception, the Service will review the application and all supporting documentation, and the Service will conduct any necessary analysis to estimate the exception's impact.

(A) *Notification.* The Service will notify the assigned official agency prior to granting an exception for nonuse of service.

(B) *Challenge.* The assigned official agency may challenge a proposed exception for any reason. To challenge a proposed exception, the assigned official agency must object in writing, and must submit supporting documents to the Service within 14 days after the date of notification. Documents must clearly identify the objection and support the identified reason for the challenge.

(C) *Determination.* The Service will consider impacts on the assigned official agency, the applicant, and the potential gaining agency when deciding whether to grant an exception. These impacts may include, but are not limited to, the viability of the assigned official agency given the loss of business. The Service will also consider the impact on the integrity of the official system and confirm an exception would not undermine the congressional policies in section 2 of the United States Grain Standards Act. The Service will provide its decision in writing to the assigned official agency, the applicant, and the potential gaining agency.

(v) *False or Misleading Requests.* If an applicant submits a request that the Service determines is false or misleading the Service may elect to limit them from submitting further requests for a period of up to 180 days.

(vi) *Renewal or Termination of Exception.* The nonuse of service exception is for the period of the gaining agency's designation. At the end of the designation, the Service will review the exception, and verify all criteria and information. If the exception still meets the nonuse criteria, the Service will renew the exception for the new designation period. In the event the gaining agency is no longer designated, the exception would automatically terminate and the customer would return to the assigned official agency. If all parties jointly agree to the termination of a nonuse of service exception, the Service will terminate the exception. In this case, the assigned official agency must resume service within 60 days of notification.

(vii) *Historic exceptions.* All *nonuse of service exceptions,* that were in place as of March 30, 2019, will be incorporated into geographic boundaries of the gaining agencies.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–17609 Filed 8–18–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0012]

RIN 1904–AF22

Energy Conservation Program: Definitions for General Service Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: On January 19, 2017, the U.S. Department of Energy (''DOE'') published two final rules adopting revised definitions of general service lamp (''GSL'') and general service incandescent lamp (''GSIL''), and other supplemental definitions, to go into effect January 1, 2020. Prior to that effective date, on September 5, 2019, DOE withdrew the revised definitions of GSL, GSIL, and the other supplemental definitions. Upon further review and consideration, in this notice of proposed rulemaking (''NOPR''), DOE proposes to adopt the definitions of GSL and GSIL and the associated supplemental definitions set forth in the January 2017 final rules. This document also announces a public meeting to receive comment on these proposed definitions.

DATES:

Meeting: DOE will hold a public meeting via webinar on Thursday, September 30, 2021, from 10:00 a.m. to 4:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this NOPR no later than October 18, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments identified by docket number EERE–2021–BT–STD–0012, and by email: To *2021STD0012GSLDefinitions@ee.doe.gov.* Include docket number EERE–2021–BT–STD–0012 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Although DOE has routinely accepted public comment submissions through a

variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus disease 2019 (''COVID–19'') pandemic. DOE is accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/#!docketDetail;D=EERE-2021-BT-STD-0012.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

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For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Authority and Background

Amendments to the Energy Policy and Conservation Act (''EPCA'') in the Energy Independence and Security Act of 2007, Public Law 110–140 (''EISA'') directed DOE to conduct a number of rulemakings regarding coverage of lamps as GSLs and GSILs, and to evaluate energy conservation standards for such lamps. 42 U.S.C. 6295(i)(6)(A)–(B). Pursuant to this authority, DOE conducted a rulemaking to establish revised regulatory definitions for GSLs and GSILs. *See* 82 FR 7276 (Jan. 19, 2017); 82 FR 7322 (Jan. 19, 2017). Subsequently, DOE conducted a rulemaking in which it withdrew these revised definitions before they took effect. 84 FR 46661 (Sept. 5, 2019). The following paragraphs provide an overview of the authorities and final rules issued by DOE relevant to the definitions for GSL, GSIL, and related terms, as proposed in this NOPR.

A. Authority

EPCA, as amended,[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. 42 U.S.C. 6291–6317. Title III, Part B [2] of EPCA, established the Energy Conservation Program for Consumer Products Other Than Automobiles. 42 U.S.C. 6291–6309. These products include GSLs, the subject of this rulemaking.

EPCA directs DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs. 42 U.S.C. 6295(i)(6)(A)–(B). GSLs are defined in EPCA to include GSILs, compact fluorescent lamps (''CFLs''), general service light-emitting diode (''LED'') lamps and organic light emitting diode (''OLED'') lamps, and any other lamps that the Secretary of Energy (''Secretary'') determines are used to satisfy lighting applications traditionally served by general service incandescent lamps. 42 U.S.C. 6291(30)(BB)(i), (CC)(i), (DD). The EPCA provision setting forth relevant definitions indicates that the term ''general service lamp'' in EPCA does not include any of the twenty-two lighting applications or bulb shapes explicitly not included in the definition of ''general service incandescent lamp,'' [3] or any general service fluorescent lamp or incandescent reflector lamp. 42 U.S.C. 6291(30)(BB)(ii).

For the first rulemaking cycle, EPCA directs DOE to initiate a rulemaking process prior to January 1, 2014, to consider two questions: (1) Whether to amend energy conservation standards

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] As defined in EPCA ''general service incandescent lamp'' does not include the following incandescent lamps: (I) An appliance lamp; (II) A black light lamp; (III) A bug lamp; (IV) A colored lamp; (V) An infrared lamp; (VI) A left-hand thread lamp; (VII) A marine lamp; (VIII) A marine signal service lamp; (IX) A mine service lamp; (X) A plant light lamp; (XI) A reflector lamp; (XII) A rough service lamp; (XIII) A shatter-resistant lamp (including a shatter-proof lamp and a shatter-protected lamp); (XIV) A sign service lamp; (XV) A silver bowl lamp; (XVI) A showcase lamp; (XVII) A three-way incandescent lamp; (XVIII) A traffic signal lamp; (XIX) A vibration service lamp; (XX) A G shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002[)] with a diameter of 5 inches or more; (XXI) A T shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002) [and] that uses not more than 40 watts or has a length of more than 10 inches; (XXII) A B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamp (as defined in ANSI C79.1–2002 and ANSI C78.20–2003) of 40 watts or less. 42 U.S.C. 6291(30)(D)(ii).

for general service lamps to establish more stringent standards than EPCA specifies, and (2) whether ''the exemptions for certain incandescent lamps should be maintained or discontinued.'' 42 U.S.C. 6295(i)(6)(A)(i). In developing such a rule, DOE must consider a minimum efficacy standard of 45 lumens per watt (''lm/W''). 42 U.S.C. 6295(i)(6)(A)(ii). Further, if the Secretary determines that the standards in effect for GSILs should be amended, EPCA provides that a final rule must be published by January 1, 2017, with an effective date at least three years after the date on which the final rule is published. 42 U.S.C. 6295(i)(6)(A)(iii). Additionally, EPCA directs that the Secretary shall consider phased-in effective dates after considering certain economic factors. 42 U.S.C. 6295(i)(6)(A)(iv). If DOE fails to complete a rulemaking in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv), or if a final rule from the first rulemaking cycle does not produce savings greater than or equal to the savings from a minimum efficacy standard of 45 lm/W, the statute provides a ''backstop'' under which DOE must prohibit sales of GSLs that do not meet a minimum 45 lm/W standard. 42 U.S.C. 6295(i)(6)(A)(v).

EPCA further directs DOE to initiate a second rulemaking cycle by January 1, 2020, to determine whether standards in effect for GSILs (which are a subset of GSLs) should be amended with more stringent maximum wattage requirements than EPCA specifies, and whether the exemptions for certain incandescent lamps should be maintained or discontinued. 42 U.S.C. 6295(i)(6)(B)(i). As in the first rulemaking cycle, the scope of the second rulemaking is not limited to incandescent lamp technologies. 42 U.S.C. 6295(i)(6)(B)(ii).

In addition to the two mandated rulemaking cycles, under the statutory definition of GSL, DOE has authority to include lamps as GSLs upon determining that they are ''used to satisfy lighting applications traditionally served by general service incandescent lamps.'' 42 U.S.C. 6291(30)(BB)(i)(IV).

B. March 2016 Notice of Proposed Rulemaking and October 2016 Notice of Proposed Definition and Data Availability

Pursuant to its statutory authority, DOE published a Notice of Proposed Rulemaking on March 17, 2016 that addressed the first question that Congress directed it to consider—whether to amend energy conservation standards for GSLs (''March 2016 NOPR''). 81 FR 14528, 14629–14630 (Mar. 17, 2016). In that NOPR, DOE stated that it would be unable to undertake any analysis regarding GSILs and other incandescent lamps because of a then-applicable congressional restriction (''the Appropriations Rider''). *See Id.* at 81 FR 14528, 14540–14541. The Appropriations Rider prohibited expenditure of funds appropriated by that law to implement or enforce: (1) 10 CFR 430.32(x), which includes maximum wattage and minimum rated lifetime requirements for GSILs; and (2) standards set forth in section 325(i)(1)(B) of EPCA (42 U.S.C. 6295(i)(1)(B)), which sets minimum lamp efficiency ratings for incandescent reflector lamps (''IRLs''). Under the Appropriations Rider, DOE was restricted from undertaking the analysis required to address the first question presented by Congress, but was not so limited in addressing the second question—that is, DOE was not prevented from determining whether the exemptions for certain incandescent lamps should be maintained or discontinued. To address that second question, DOE published a Notice of Proposed Definition and Data Availability (''NOPDDA''), which proposed to amend the definitions of GSIL, GSL, and related terms (''October 2016 NOPDDA''). 81 FR 71794, 71815 (Oct. 18, 2016). Notably, the Appropriations Rider originally was adopted in 2011 and was readopted and extended continuously in multiple subsequent legislative actions. It expired on May 5, 2017, when the Consolidated Appropriations Act, 2017 was enacted.[4]

C. January 2017 Final Rules

On January 19, 2017, DOE published two final rules concerning the definitions of GSL, GSIL, and related terms. 82 FR 7276; 82 FR 7322 (''January 2017 Final Rules''). The January 2017 Final Rules amended the definitions of GSIL and GSL by bringing certain categories of lamps within the definitions of GSIL and GSL that EPCA had exempted. These two rules were issued simultaneously, with the first rule maintaining the existing exemption for IRLs in the definition of GSL and the second rulemaking determining to discontinue the IRL exemption. *See* 82 FR 7312; 82 FR 7323. The January 2017 Final Rules related only to the second question that Congress directed DOE to consider, regarding whether to maintain or discontinue ''exemptions'' for certain incandescent lamps. 42 U.S.C. 6295(i)(6)(A)(i)(II). DOE explained in the rule that the discontinuation of certain exemptions would render the lamps within those exemptions GSLs, to the extent they would otherwise qualify as GSLs. For certain lamps, the discontinuation of the exemption may also render the lamp a GSIL, to the extent it would otherwise qualify as a GSIL. 82 FR 7277. DOE stated that it would then either impose standards on these lamps pursuant to its authority to develop GSL standards or apply the backstop standard prohibiting the sale of lamps not meeting a 45 lm/W efficacy standard. 82 FR 7276, 7277. The definitions in the January 2017 Final Rules were to become effective on January 1, 2020. 82 FR 7276, 7276; 82 FR 7322, 7322.

D. September 2019 Withdrawal Rule and Subsequent Review

With the removal of the Appropriations Rider in the Consolidated Appropriations Act, 2017, DOE was no longer restricted from undertaking the analysis and decision-making required to address the first question presented by Congress—that is, whether to amend energy conservation standards for GSLs, including GSILs. Thus, on August 15, 2017, DOE published a Notice of Data Availability and request for information (''NODA'') seeking data for GSILs and other incandescent lamps (''August 2017 NODA''). 82 FR 38613.

The purpose of the August 2017 NODA was to assist DOE in determining whether standards for GSILs should be amended. 42 U.S.C. 6295(i)(6)(A)(i)(I). Comments submitted in response to the August 2017 NODA also led DOE to reconsider the decisions it had already made with respect to the second question presented to DOE (whether the exemptions for certain incandescent lamps should be maintained or discontinued). 42 U.S.C. 6295(i)(6)(A)(i)(II). As a result of the comments received in response to the August 2017 NODA, DOE also re-assessed the legal interpretations underlying certain decisions made in the January 2017 Final Rules.

On February 11, 2019, DOE published a NOPR proposing to withdraw the revised definitions of GSL and GSIL, and the new and revised definitions of related terms that were to go into effect on January 1, 2020. 84 FR 3120. In a final rule published September 5, 2019, DOE finalized the withdrawal of the definitions of GSIL, GSL, and related terms established in the January 2017 Final Rules. 84 FR 46661 (''September 2019 Withdrawal Rule''). Informed, in part, by comments received in response

[4] *See* Consolidated Appropriations Act of 2017 (Pub. L. 115–31, div. D, tit. III); *see also* Consolidated Appropriations Act, 2018 (Pub. L. 115–141).

to the August 2017 NODA, DOE concluded in the September 2019 Withdrawal Rule that maintaining the definitions for GSL and GSIL as established by EPCA and not discontinuing certain exemptions pursuant to the required review under 42 U.S.C. 6295(i)(6)(A)(i) was the best reading of the statute. 84 FR 46661, 46665–46666. DOE also stated that it identified inaccuracies underlying its determination to revise the definitions of GSL and GSIL. 84 FR 46661, 46665. Based on data received in response to the August 2017 NODA, DOE learned that it had overestimated shipment numbers for candelabra base incandescent lamps by a factor of more than two. *Id.* In withdrawing the definitions established in the January 2017 Final Rules, DOE specifically addressed its determinations to maintain the exemptions for rough service lamps; shatter-resistant lamps; three-way incandescent lamps; high lumen incandescent lamps (2,601–3,300 lumens); vibration service lamps; T-shape lamps of 40 watts (''W'') or less or length of 10 inches or more; B, BA, CA, F, G16–1/2, G25, G30, S, M–14 lamps of 40 W or less; candelabra base lamps; and IRLs. *Id.*

The September 2019 Withdrawal Rule also addressed issues and comments regarding the imposition of the 45 lm/W backstop, applicability of EPCA's anti-backsliding provision at 42 U.S.C. 6295(o), and preemption of State regulation of lamps. 84 FR 46663–46665, 46669. These additional issues are not the subject of this NOPR. DOE has requested comments and data to inform further consideration of the 45 lm/W backstop provision. *See* 86 FR 28001 (May 25, 2021).

As a result of the September 2019 Withdrawal Rule, the amended definitions of GSL and GSIL and the new and revised definitions of related terms established in the January 2017 Final Rules were withdrawn prior to going into effect. The current regulatory definitions of GSL and GSIL are those set forth in EPCA. *See* 10 CFR 430.2; *see also* 42 U.S.C. 6291(30)(D); 42 U.S.C. 6291(30)(BB).

Subsequent to the September 2019 Withdrawal Rule, on January 20, 2021, President Biden issued Executive Order (''E.O.'') 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' 86 FR 7037 (Jan. 25, 2021). Section 1 of that Order lists a number of policies related to the protection of public health and the environment, including reducing greenhouse gas emissions and bolstering the Nation's resilience to climate change. 86 FR 7037, 7041. Section 2 of the Order instructs all agencies to review ''existing regulations, orders, guidance documents, policies, and any other similar agency actions . . . promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, [these policies].'' *Id.* Agencies are then directed, as appropriate and consistent with applicable law, to consider suspending, revising, or rescinding these agency actions and to immediately commence work to confront the climate crisis. *Id.*

Consistent with E.O. 13990, DOE has undertaken a review of the definitions of GSL and GSIL in the September 2019 Withdrawal Rule and the January 2017 Final Rules. Although E.O. 13990 triggered DOE's review, DOE is relying on its analysis below, based on the language and intent of EPCA, to support its decision to reconsider the September 2019 Withdrawal Rule. As a result of this review, DOE rejects the alternative interpretation of the statutory directives in EPCA set forth in the September 2019 Withdrawal rule and preliminarily determines that DOE's interpretation in this proposed rule is the best and proper reading of the statute.

II. Synopsis of the Proposed Rule

In this NOPR, DOE proposes to amend the definitions of GSL and GSIL as previously set forth in the January 2017 Final Rules. DOE has preliminarily determined that the definitions as proposed are consistent with the congressional direction provided in EPCA and further the purposes set forth in EPCA, as well as in E.O. 13990. Additionally, DOE proposes to adopt the supplemental definitions established in the January 2017 Final Rules, which relate to the proposed definitions of GSL and GSIL. DOE is not proposing whether standards for GSLs, including GSILs, should be amended. Rather, DOE is proposing the scope of lamps to be considered in such a determination.

III. General Discussion

A. GSL and GSIL Definitions

To provide context for this NOPR, this section provides further description of the statutory and regulatory definitions, as amended under the January 2017 Final Rules and September 2019 Withdrawal Rule rulemakings.

EPCA defines the class of GSLs as including GSILs, CFLs, general service LED and OLED lamps, and any other lamps that DOE determines are used to satisfy lighting applications traditionally served by GSILs; however, as initially specified by EPCA, GSLs did not include any lighting application or bulb shape that under 42 U.S.C. 6291(30)(D)(ii) is not included in the ''general service incandescent lamp'' definition, or any general service fluorescent lamp or incandescent reflector lamp. 42 U.S.C. 6291(30)(BB).

EPCA defines a GSIL generally as a standard incandescent or halogen type lamp that is intended for general service applications; has a medium screw base; has a lumen range of not less than 310 lumens and not more than 2,600 lumens or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens; and is capable of being operated at a voltage range at least partially within 110 and 130 volts. 42 U.S.C. 6291(30)(D)(i). This definition does not apply, however, to the following incandescent lamps: An appliance lamp; a black light lamp; a bug lamp; a colored lamp; an infrared lamp; a left-hand thread lamp; a marine lamp; a marine signal service lamp; a mine service lamp; a plant light lamp; a reflector lamp; a rough service lamp; a shatter-resistant lamp (including a shatter-proof lamp and a shatter-protected lamp); a sign service lamp; a silver bowl lamp; a showcase lamp; a three-way incandescent lamp; a traffic signal lamp; a vibration service lamp; a G shape lamp (as defined in ANSI C78.20 and ANSI C79.1–2002) with a diameter of 5 inches or more; a T shape lamp (as defined in ANSI C78.20 and ANSI C79.1–2002) and that uses not more than 40 watts or has a length of more than 10 inches; and a B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamp (as defined in ANSI C79.1–2002 and ANSI C78.20) of 40 watts or less. 42 U.S.C. 6291(30)(D)(ii).

In the January 2017 Final Rules, invoking the rulemaking authority afforded by EPCA in 42 U.S.C. 6291(30)(BB)(i)(IV), DOE amended the regulatory definition of GSL to mean a lamp that had an ANSI base; was able to operate at a voltage of 12 volts or 24 volts, at or between 100 to 130 volts, at or between 220 to 240 volts, or of 277 volts for integrated lamps, or was able to operate at any voltage for non-integrated lamps; had an initial lumen output of greater than or equal to 310 lumens (or 232 lumens for modified spectrum general service incandescent lamps) and less than or equal to 3,300 lumens; was not a light fixture; was not an LED downlight retrofit kit; and was used in general lighting applications. 82 FR 7312. General service lamps included, but were not limited to, general service incandescent lamps, compact fluorescent lamps, general

service light-emitting diode lamps, and general service organic light-emitting diode lamps. 82 FR 7276, 7321.

As defined in the January 2017 Final Rules, GSLs did not include: (1) Appliance lamps; (2) Black light lamps; (3) Bug lamps; (4) Colored lamps; (5) G shape lamps with a diameter of 5 inches or more as defined in ANSI C79.1–2002; (6) General service fluorescent lamps; (7) High intensity discharge lamps; (8) Infrared lamps; (9) J, JC, JCD, JCS, JCV, JCX, JD, JS, and JT shape lamps that do not have Edison screw bases; (10) Lamps that have a wedge base or prefocus base; (11) Left-hand thread lamps; (12) Marine lamps; (13) Marine signal service lamps; (14) Mine service lamps; (15) MR shape lamps that have a first number symbol equal to 16 (diameter equal to 2 inches) as defined in ANSI C79.1–2002, operate at 12 volts, and have a lumen output greater than or equal to 800; (16) Other fluorescent lamps; (17) Plant light lamps; (18) R20 short lamps; (19) Reflector lamps that have a first number symbol less than 16 (diameter less than 2 inches) as defined in ANSI C79.1– 2002 and that do not have E26/E24, E26d, E26/50x39, E26/53x39, E29/28, E29/53x39, E39, E39d, EP39, or EX39 bases; (20) S shape or G shape lamps that have a first number symbol less than or equal to 12.5 (diameter less than or equal to 1.5625 inches) as defined in ANSI C79.1–2002; (21) Sign service lamps; (22) Silver bowl lamps; (23) Showcase lamps; (24) Specialty MR lamps; (25) T shape lamps that have a first number symbol less than or equal to 8 (diameter less than or equal to 1 inch) as defined in ANSI C79.1–2002, nominal overall length less than 12 inches, and that are not compact fluorescent lamps; and (26) Traffic signal lamps. *Id.;* 82 FR 7322, 7333.

The January 2017 Final Rules defined GSIL to discontinue the exemptions for rough service lamps; shatter-resistant lamps; three-way incandescent lamps; vibration service lamps; reflector lamps; T-shape lamps of 40 W or less or length of 10 inches or more; and B, BA, CA, F, G16–1/2, G25, G30, S, M–14 lamps of 40 W or less. 82 FR 7276, 7291.

DOE subsequently withdrew the definitions as established in the January 2017 Final Rules before their effective date and reverted to the statutory definitions. As a result, the exemptions from the definitions of GSL and GSIL as originally provided in EPCA are currently maintained.

B. Discontinuation of Exemptions

The September 2019 Withdrawal Rule failed to give meaningful effect to the statutory direction that DOE determine whether exemptions for certain incandescent lamps should be discontinued. In adopting the rulemaking mandate, Congress provided DOE with the authority to adjust the scope of GSLs and GSILs to ensure that the energy savings Congress intended would be achieved notwithstanding the possibility that, with the passage of time, different lamps might be used to satisfy lighting applications traditionally served by GSILs. 42 U.S.C. 6295(i)(6)(A)(i)–(ii). In disavowing DOE's prior conclusions in the January 2017 Final Rules, the September 2019 Withdrawal Rule incongruously asserted that the statutory command to DOE to determine whether to discontinue certain exemptions did not give DOE authority to amend statutory definitions by regulation, 84 FR 46667, but then failed to explain what that command does authorize. In doing so, the September 2019 Withdrawal Rule disregarded congressional intent as expressed through the statutory language. In contrast, the position taken in the January 2017 Final Rules did fulfill the intent of Congress by using the authority granted to DOE through EISA to achieve the energy savings for GSLs that Congress expected. This position represents the best implementation of EPCA given the potential for lost energy savings that may result from the use of lamps in general lighting applications that would not be subject to energy conservation standards. As DOE understood in the January 2017 Final Rules, EPCA exempted certain categories of lamps because, on the one hand, some lamps in those categories have specialty applications; and on the other hand, it was not clear, at the time when these lamp provisions were originally enacted, whether those lamps were used to satisfy lighting applications traditionally served by GSILs. 82 FR 7276, 7277. The purpose, then, of the determination Congress directed DOE to make (*i.e.,* whether to maintain or to discontinue a given exemption (42 U.S.C. 6295(i)(6)(A)(i)(II))) was that DOE should assess the role of lamps of the various exempted types in the broader lighting market, bearing in mind the evident statutory purpose of achieving energy conservation by imposing efficiency standards for general lighting. *Id.* at 82 FR 7276, 7277. That is, Congress directed DOE to evaluate whether the exempted lamps are being used in applications in which GSILs have previously been used.

In the September 2019 Withdrawal Rule, DOE failed to properly consider the congressional intent underlying EPCA generally and EISA specifically, and, consequently, failed to read the statute in the proper context, leading to an incorrect interpretation by DOE in 2019 that it could not exercise its authority to remove exemptions for certain incandescent lamps that are used in general lighting applications. The initial determination reached here to adopt the definitions established in the January 2017 Final Rules best aligns with EPCA's goals for increasing the energy efficiency of covered products through the establishment and amendment of energy conservation standards and promoting conservation measures when feasible. 42 U.S.C. 6291 *et seq.,* as amended.

C. GSLs and GSILs

As discussed in section I.A, EPCA directs DOE to initiate a rulemaking process prior to January 1, 2014, to consider two questions: (1) Whether to amend energy conservation standards for general service lamps and (2) whether ''the exemptions for certain incandescent lamps should be maintained or discontinued.'' 42 U.S.C. 6295(i)(6)(A)(i). In the January 2017 Final Rules, which addressed the second question, DOE understood the purpose of the determinations regarding exemptions required under section (i)(6)(A)(i)(II) of EPCA to be to ensure that a given exemption would not impair the effectiveness of GSL standards by leaving available a convenient substitute that is not regulated as a GSL. DOE based its decision for each exemption on an assessment of whether the exemption encompasses lamps that can provide general illumination and can functionally be a ready substitute for lamps already covered as GSLs. *Id.* A lamp that is capable of providing general illumination has design features that make it highly suitable for performing that task in the sort of application in which GSILs have traditionally served. 82 FR 7276, 7303. The technical characteristics of lamps in a given exemption and the volume of sales of those lamps were among the considerations relevant to that assessment. 82 FR 7276, 7288. High annual sales were an indication that the product is likely used in general lighting applications, because the sales of lamps for specialty applications tend to be relatively small compared with sales for general-purpose lighting. *Id.* DOE also cautioned that sales data are not the only consideration, as it may be appropriate to discontinue an exemption even though current sales are relatively low, if technical characteristics of the exempted lamps make them likely to serve as ready

substitutes for GSLs once GSL standards are in place. *Id.*

Contrary to this position, in the September 2019 Withdrawal Rule, DOE stated that it may have overstepped its limited authority by relying on factors that Congress did not intend it to consider. DOE further stated that it was no longer using ''convenient unregulated alternatives'' as a basis upon which to discontinue exemptions for specialty lamp types. DOE agreed with those commenters that asserted this consideration went beyond the authority granted by Congress to use the potential that a lamp may be considered a loophole to GSL standards as the basis for discontinuing its exemption under the statute. 84 FR 46661, 46668–46669. Subsequently, in the September 2019 Withdrawal Rule, DOE maintained the definitions of GSLs and GSILs. *Id.*

Upon reviewing the September 2019 Withdrawal Rule, DOE now recognizes that the analysis in that rule may have overlooked certain considerations and may not have accurately characterized the actions taken in the January 2017 Final Rules. Certain factors were not fully explored in the September 2019 Withdrawal Rule and merit consideration in determining whether to amend the definitions of GSL and GSIL. The specific discussions from the September 2019 Withdrawal Rule that require further consideration are addressed in the appropriate sections that follow.

Based on the analysis and evaluation presented in the rulemaking culminating in the January 2017 Final Rules, and the discussion that follows, DOE is proposing to define GSIL to mean: A standard incandescent or halogen type lamp that is intended for general service applications; has a medium screw base; has a lumen range of not less than 310 lumens and not more than 2,600 lumens or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens; and is capable of being operated at a voltage range at least partially within 110 and 130 volts; however, this definition does not apply to the following incandescent lamps: An appliance lamp; a black light lamp; a bug lamp; a colored lamp; a G shape lamp with a diameter of 5 inches or more as defined in ANSI C79.1–2002; an infrared lamp; a left-hand thread lamp; a marine lamp; a marine signal service lamp; a mine service lamp; a plant light lamp; an R20 short lamp; a sign service lamp; a silver bowl lamp; a showcase lamp; and a traffic signal lamp.

The proposed definition explicitly exempts R20 short lamps to maintain an exemption for these lamps consistent with DOE's determination in a final rule published on November 14, 2013, that standards for R20 short lamps would not result in significant energy savings because such lamps are designed for special applications or have special characteristics not available in reasonably substitutable lamp types. 78 FR 68331, 68340.

As stated, GSILs are included in the definition of GSL. 42 U.S.C. 6291(30)(BB)(i)(I). Any lamp that meets the definition of a GSIL would be a GSL. As such, consideration of whether a GSIL exemption should be maintained, for purposes of both the GSL definition and the GSIL definition, is informed, in part, by the considerations under DOE's authority to include other lamps as GSLs because they ''are used to satisfy lighting applications traditionally served by general service incandescent lamps.'' 42 U.S.C. 6291(30)(BB)(i)(IV). Based on DOE's review of product availability, technical information, and prior stakeholder comments, DOE preliminarily finds that the unavailability of non-incandescent substitutes for a given lamp suggests that the lamp is not being used for traditional GSIL applications. If design characteristics of lamps for a given application are such that the non-incandescent lamp cannot be made with the same characteristics, DOE preliminarily concludes those lamps are not being used for general illumination and, therefore, such lamps would be excluded from the definition of GSLs *See* 82 FR 7276, 7301.

Also relevant to DOE's consideration of whether to maintain a GSIL exemption, DOE must also determine what types of lighting applications have been traditionally served by GSILs. As stated in the January 2017 Final Rules, traditionally, lamps that are standard incandescent or halogen and that satisfy the other criteria for the definition of GSIL in 42 U.S.C. 6291(30)(D) have served general lighting applications. 82 FR 7276, 7302. By ''general lighting applications,'' DOE means lighting that provides an interior or exterior area with overall illumination. DOE considers the term ''overall illumination'' to be similar in meaning to the term ''general lighting'' as defined in the industry standard ANSI/IES RP–16–10, which states that ''general lighting'' means lighting designed to provide a substantially uniform level of illuminance throughout an area, exclusive of any provision for special local requirements.

Further discussion of DOE's consideration of including other lamps as GSLs is discussed in greater detail in section III.D of this document. The following paragraphs discuss the proposed discontinuation of the exemptions for certain T-shape, B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps; rough service lamps; vibration service lamps; three-way incandescent lamps; and shatter-resistant lamps.

1. T-Shape, B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 Lamps

In the January 2017 Final Rules, DOE discontinued the exemptions for certain T-shape lamps and certain B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps. 82 FR 7276, 7294. DOE found that T-shape lamps are frequently used in general lighting applications and thus present a significant risk for lamp switching. Based on this high potential for lamp switching—reflected in part by high sales—DOE discontinued the GSIL exemption for these lamps. *Id.* Regarding B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps, DOE noted that Congress listed these lamps together in paragraph (XXII), and so considered whether to maintain the exemption for these lamps as a group. *Id.* DOE also noted that the pear shapes and globe shapes characterized by the majority of lamps in this category would not prevent consumers from using them in general service lighting applications and found that these lamps are very common. 82 FR 7276, 7295. DOE considered the potential for lamp switching through the future use of different fixtures and found there to be a potential that inclusion of some but not all of the lamps in the group would shift the market to the lamp or lamps that remain exempt. *Id.* Accordingly, DOE discontinued exemptions in the GSIL definition for B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps of 40 W or less. *Id.*

However, in the January 2017 Final Rules, DOE did maintain exemptions from the GSL definition set forth in those final rules for the following lamp shapes: (1) T-shape lamps that have a first number symbol less than or equal to 8 (diameter less than or equal to 1 inch) as defined in ANSI C79.1–2002, nominal overall length less than 12 inches, and that are not compact fluorescent lamps; and (2) S-shape or G-shape lamps that have a first number symbol less than or equal to 12.5 (diameter less than or equal to 1.5625 inches) as defined in ANSI C79.1–2002. DOE concluded that those lamps should not have been included in the GSL definition set forth in those final rules because they do not and likely cannot have equivalent replacements using more efficient technology. 82 FR 7276, 7310.

In the September 2019 Withdrawal Rule, DOE addressed the discontinuation of exemptions for certain T-shape, B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps together with candelabra base lamps, stating that discontinuing the exemptions for all of these lamp categories was not consistent with the best reading of the statute because such lamps are not used in the same applications as the standard GSIL. 84 FR 46661, 46668. DOE stated that these lamps generally provide a more limited range of light output as compared with GSILs not subject to exemption, have form factors not as large as GSILs not subject to exemptions, and present a decorative aesthetic not replicated by GSILs not subject to the exemptions. *Id.*

Upon further consideration, DOE has tentatively determined that candelabra base lamps were inappropriately addressed with T-shape, B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps in the September 2019 Withdrawal Rule. The January 2017 Final Rules determined whether T-shape, B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps would remain exempt from the definition of GSIL, and thus were evaluated in the context of the GSIL definition. 82 FR 7276, 7297. Candelabra base lamps were not included in this evaluation since the lamps do not have a medium screw base as required under the GSIL definition. Instead, DOE determined in the January 2017 Final Rules that candelabra base lamps should be covered as GSLs. *See* 82 FR 7276, 7310. In this NOPR, DOE appropriately addresses in section III.D of this document candelabra base lamps in the context of the GSL definition.

Regarding the light output of certain T-shape, B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps, DOE tentatively concludes that the September 2019 Withdrawal Rule inaccurately stated that these lamps provide a more limited range of light output as compared with GSILs not subject to exemption. However, these lamps were only considered to the extent that they were in the lumen range of 310–2600 per the GSIL definition. As such, in order to be included in the exemption under the statutory definition of GSIL, and therefore considered for discontinuation of the exemption in the January 2017 Final Rules, the lamps must have a lumen output of 310 lumens or greater, consistent with GSILs not subject to the exemption. As DOE concluded in the January 2017 Final Rules, even with a maximum wattage limitation, these lamps are still capable of providing overall illumination (*i.e.,* general illumination). 82 FR 7276, 7294–7295.

Regarding the form factor and size of certain T-shape, B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps, DOE tentatively concludes that such lamps were not accurately compared to lamps that meet the current statutory definition of GSIL in the September 2019 Withdrawal Rule. The September 2019 Withdrawal Rule stated that these lamps have form factors not as large as currently defined GSILs. 84 FR 46661, 46668. However, DOE now recognizes that the most common GSIL is an A19 shape,[5] and that the G25 and G30 lamps have a diameter 31 percent and 57 percent greater, respectively, than the diameter of the A19 shape. Further, the September 2019 Withdrawal Rule stated that these lamp shapes present a decorative aesthetic not replicated by lamps that meet the current statutory definition of GSIL. *Id.* DOE no longer agrees that this statement supports continued exemption, as data indicates that the decorative shape does not prevent consumers from using them in general service lighting applications. *See* 82 FR 7276, 7310. Additionally, as described previously, some lamps with these shapes are currently certified as being compliant with DOE's standards for GSILs. As stated, if a more efficient version with the same shape cannot be made for a technical reason, DOE did not include the lamp as a GSL in the definition adopted by the January 2017 Final Rules and similarly does not propose to include such a lamp in the definition of GSL in this proposal.

With regard to T-shape lamps, DOE finds that T-shape lamps are capable of providing overall illumination and therefore can readily serve general lighting applications. See 82 FR 7276, 7294. With regard to B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps, DOE is considering whether to maintain the exemption for these lamps as a group due to its concern with lamp switching. As stated in the January 2017 Final Rules, DOE recognizes that the lamps listed here may each not be substituted for one another in existing fixtures, but present the potential for lamp switching through the future use of different fixtures. 82 FR 7276, 7295. As indicated by the high sales data of this category presented in the January 2017 Final Rules (82 FR 7276, 7291), DOE tentatively concludes these lamps to be very common and usable in general lighting applications. For the reasons discussed in the preceding paragraphs and presented in the January 2017 Final Rules, DOE has tentatively concluded that the basis for discontinuing the exemption for certain T-shape, B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps in this proposal is the best interpretation of the statute. In contrast to the interpretation adopted by DOE in 2019, this proposal best satisfies the intent of Congress and implements the objective of the statutory language of EPCA to conserve energy through regulation of certain energy uses and provide improved energy efficiency of certain consumer products. *See* 42 U.S.C. 6201. Accordingly, DOE proposes to define these products as GSILs in this proposal. DOE requests information and data, if available, on sales data of T-shape, B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps.

2. Rough Service Lamps, Vibration Service Lamps, Three-Way Incandescent Lamps, and Shatter-Resistant Lamps

Under 42 U.S.C. 6295(*l*)(4), DOE is required to undertake a rulemaking for rough service lamps, shatter-resistant lamps, three-way incandescent lamps, and vibration service lamps when the sales of these lamps meet specified thresholds.[6] DOE is also required, in consultation with the National Electrical Manufacturers Association (''NEMA''), to collect sales data for these lamps and construct a model to predict future sales. 42 U.S.C. 6295(*l*)(4)(B). DOE must then track the actual sales data, and when sales exceed sales projected by the model by 100 percent, DOE must initiate an energy conservation standard rulemaking. 42 U.S.C. 6295(*l*)(4)(D), (E), (F), (H). If DOE does not complete the accelerated rulemaking in the specified time period, it must impose a backstop requirement for that lamp. 42 U.S.C. 6295(*l*)(4)(D)(ii), (E)(ii), (F)(ii), (H)(ii).

In the January 2017 Final Rules, DOE determined that the rulemaking provisions at 42 U.S.C. 6295(*l*)(4) were not the only way in which DOE can regulate these lamps. 82 FR 7276, 7296. DOE noted that the text of 42 U.S.C. 6295(i) and 42 U.S.C. 6295(*l*)(4) does not state that the 42 U.S.C. 6295(*l*)(4) process operates to the exclusion of regulating these lamps as GSLs and that the provisions under 42 U.S.C. 6295(*l*)(4) could be complementary to regulation of these lamps as GSLs. *Id.* Based in part on the potential for these lamp types to serve as replacements to

[5] See the final determination regarding energy conservation standards for GSILs published on December 27, 2019. 84 FR 71626.

[6] Lamps that otherwise would be GSILs but for having a lumen range between 2,601–3,300 (referred to in 42 U.S.C. 6295(*l*)(4) as ''2,601–3,300 lumen general service incandescent lamps'') were defined in the January 2017 Final Rules as GSLs but not GSILs, and therefore are not addressed in this section.

regulated GSLs, DOE discontinued the exemption for rough service lamps, shatter-resistant lamps, three-way incandescent lamps and vibration service lamps in the January 2017 Final Rules. *Id.*

In the September 2019 Withdrawal Rule, DOE determined that, since these lamps are subject to standards in accordance with a specific regulatory process under 42 U.S.C. 6295(*l*)(4), there is no need to undertake an additional process for determining whether to establish energy conservation standards for these lamp types as GSLs under 42 U.S.C. 6295(i)(6)(A)(i). 84 FR 46661, 46666. DOE explained that doing so would potentially subject these lamps types to two separate standards and potentially create confusion among regulated entities. *Id.* Moreover, DOE noted that the regime for potential regulation of these lamp types was added to the statute in the same enactment that required DOE to consider standards for GSLs, and in both instances the criteria stated in the statute for consideration for standards includes consideration of sales of the subject lamps. *Id.* In the September 2019 Withdrawal Rule, DOE read the inclusion of sales consideration in both 42 U.S.C. 6295(i)(6)(A)(i) and 42 U.S.C. 6295(*l*)(4) as an indication that Congress intended the two rulemaking provisions to be exclusive of one another. *Id.*

In this NOPR, DOE is reconsidering whether the separate regulatory process under 42 U.S.C. 6295(*l*)(4) precludes these lamp types from becoming GSILs, and subsequently GSLs. The September 2019 Withdrawal Rule did not consider that other lamps potentially subject to standards as GSLs also have statutorily prescribed standards, namely, GSILs and medium base CFLs. *See* Section 321(a)(3) of the Energy Independence and Security Act of 2007 (Pub. L. 110–140; ''EISA'');[7] 42 U.S.C. 6295(bb). That lamps subject to statutory standards are also expressly GSLs subject to GSL standards indicates that coverage under more than one statutory scheme is not precluded under the statute.

Further, upon a review of how Congress has amended EPCA, DOE has tentatively concluded that standards for these exempt lamp types are not to be developed only in accordance with 42 U.S.C. 6295(*l*)(4)(A). Section 325(*l*)(4) of EPCA requires DOE to ''prescribe an energy efficiency standard for rough service lamps, vibration service lamps, three-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps in accordance with this paragraph.'' 42 U.S.C. 6295(*l*)(4)(A). Prior to 2012, that provision instead required DOE to prescribe standards for such lamps ''*only* in accordance with this paragraph.'' 42 U.S.C. 6295(*l*)(4)(A) (2011) (emphasis added). In amendments under the American Energy Manufacturing Technical Corrections Act, Public Law 112–210, § 10(a)(8), 126 Stat. 1513, 1524 (2012) (''AEMTCA''), Congress removed the word ''only,'' signaling that DOE's obligation to consider discontinuing ''the exemptions for certain incandescent bulbs'' under 42 U.S.C. 6295(i)(6)(A)(i)(II) also applies to the five tracked lamps.

With regard to rough service lamps, vibration service lamps, three-way incandescent lamps, and shatter-resistant lamps, as presented in the January 2017 Final Rules, DOE tentatively concludes that such lamps have the potential for use in general lighting applications traditionally served by GSILs. DOE acknowledges that higher wattage three-way incandescent lamps may not be able to be used in all existing fixtures in which lamps currently defined as GSILs are used (*e.g.,* A19 shape lamps). However, the ability to serve as a lighting application traditionally served by GSILs is not limited by existing fixtures. As discussed, the fixtures used to serve general lighting applications may change over time, and therefore DOE considers whether a lamp can provide general illumination as a criterion for discontinuing an exemption. Regarding the shatter-resistant lamps, such lamps are capable of providing overall illumination despite the lower lumen output resulting from the shatter-resistant coating. DOE has also found that a 60 W shatter-resistant lamp is still a suitable replacement for a 40 W standard incandescent lamp. See 82 FR 7276, 7297. Shatter-resistant lamps are similar to rough service and vibration service lamps. Whereas rough service and vibration service lamps possess a filament strengthened with additional supports, shatter-resistant lamps possess a reinforced outer bulb to contain glass pieces in the event that the bulb breaks. As stated in the January 2017 Final Rules, for all three lamp types, the consumer may be under the impression that they are purchasing primarily a more durable product rather than a lamp with subpar performance. *Id.* Furthermore, as provided in the January 2017 Final Rules, for all three of these lamp types, LED versions inherently provide the consumer the desired functionality in the sense that LED lamps do not have metal filaments and typically do not use glass outer bulbs. *Id.*

For these reasons and the basis presented in the January 2017 Final Rules, DOE proposes to discontinue the exemptions for these products.

D. Other GSLs

As discussed, the definition of ''general service lamp'' includes specific categories of lamps, along with ''any other lamps that the Secretary determines are used to satisfy lighting applications traditionally served by general service incandescent lamps.'' 42 U.S.C. 6291(30)(BB)(i). In the January 2017 Final Rules, DOE previously determined that any other lamps that are intended to serve in general lighting applications and have specific features would meet the statutory criterion of lamps used to satisfy lighting applications traditionally served by GSILs. 82 FR 7276, 7300.

Although DOE had determined that several types of lamps exempted from the statutory definition of GSL are used to satisfy lighting applications traditionally served by general service incandescent lamps and therefore should be classified as GSLs (82 FR 7276, 7300–7312), the September 2019 Withdrawal Rule limited consideration of such lamps to only candelabra base lamps. Then, with respect to candelabra base lamps, the September 2019 Withdrawal Rule concluded that, as a pure matter of law, a candelabra base lamp cannot be a GSIL because EPCA defines a GSIL, in part, as having a medium-screw base. 84 FR 46661, 46668–46669. The September 2019 Withdrawal Rule also suggested that data submitted by NEMA in response to the NOPR to withdraw the January 2017 Final Rules indicated that shipments of candelabra base incandescent lamps had been in a continuous decline since 2011 and there was no evidence of increasing shipments. 84 FR 46661, 46669. Because sales data is the one explicit factor Congress provided in determining whether exemptions for certain incandescent lamps should be maintained or discontinued in 42 U.S.C. 6295(i)(6)(A)(i)(II), DOE gave this manufacturer data considerable weight in the September 2019 Withdrawal Rule. 84 FR 46661, 46669.

The September 2019 Withdrawal Rule also stated that DOE was no longer using ''convenient unregulated

[7] Section 321 added statutorily prescribed standards for GSILs as section 325(i)(1)(A) of EPCA. But because of an apparent conflict with Section 322(b) of EISA, which purported to strike section 325(i)(1) in its entirety and replace it with a different text, this provision was never codified in the U.S. Code. DOE has issued regulations implementing this uncodified provision at 10 CFR 430.32(x).

alternatives'' as a basis upon which to discontinue exemptions for specialty lamp types. 84 FR 46661, 46668. DOE explained that this type of consideration was not explicitly provided in the statute and agreed with commenters that such consideration went beyond the authority granted DOE by Congress. 84 FR 46661, 46668–46669.

Upon further review, the arguments presented in the September 2019 Withdrawal Rule incorrectly describe the rationale for including candelabra base lamps as GSLs in the January 2017 Final Rules. The arguments address discontinuing an exemption from the GSIL definition; however, in the January 2017 Final Rules, candelabra base lamps were determined to be GSLs under the provision of the GSL definition that includes any other lamps that the Secretary determines are used to satisfy lighting applications traditionally served by general service incandescent lamps. 82 FR 7276, 7312; *See also* 42 U.S.C. 6291(30)(BB)(i)(IV). Candelabra base lamps are not covered under the definition of GSILs because they do not have a medium screw base (*See* 42 U.S.C. 6291(30)(D)(i)(II)), but the January 2017 Final Rules did not consider candelabra base lamps to be GSILs. Instead, such lamps were covered as GSLs. 82 FR 7276, 7312.

DOE has preliminarily reverted to its position from the January 2017 Final Rules that relevant criteria for discontinuing an exemption for an incandescent lamp are whether the exemption encompasses lamps that can provide general illumination and whether the exempt lamps can functionally be ready substitutes for lamps already covered as GSLs. 82 FR 7276, 7288. It may be appropriate to discontinue an exemption even though current sales are relatively low, if technical characteristics of the exempted lamps make them likely to serve as ready substitutes for GSLs once GSL standards are in place. Further, for a lamp to satisfy a lighting application traditionally served by general service incandescent lamps, the lamp does not have to fit into an existing fixture served by a lamp currently defined as a GSL. As discussed, DOE has evaluated whether a lamp is capable of providing overall illumination. In the January 2017 Final Rules, DOE did not limit its consideration of an application traditionally served by GSIL to the ability to replace a lamp in a fixture currently used by a consumer that had been using a traditional incandescent lamp. 82 FR 7276, 7293. DOE noted in the January 2017 Final Rules, and reaffirms in this proposal, that lighting in homes that traditionally was provided by A shape lamps in floor and table fixtures is being provided in newer construction through reflector lamps in recessed lighting. *Id.* DOE expects that markets will shift in response to GSL standards, and would expect some substitution of fixtures to occur as part of substituting non-GSL lamps for GSLs.

While NEMA has cited declining shipments as a reason to not discontinue an exemption, declining shipments do not correlate to a decline in the demand for lighting in a particular application. NEMA has submitted data showing that GSIL shipments in 2018 were 17 percent of what they were in 2001. NEMA, No. 88 at p. 23.[8] However, DOE does not believe that this translates to an 83 percent decrease in demand for light in general lighting applications. It is more likely that consumers are switching to other products that serve in the same application. NEMA stated that it expects 71 percent of GSL sockets to be occupied by LED lamps and 19 percent to be occupied by CFLs by the end of 2021, increasing to 87 percent and 7 percent respectively by the end of 2023. NEMA, No. 88 at p. 4.[9] As lamps continue to be purchased in general lighting applications, the demand for light remains; thus, declining incandescent lamp shipments is not, on its own, an indication that the lamp is a specialty product or serves in a specialty application.

DOE has reviewed the definition of GSL as set forth in the January 2017 Final Rules and has preliminarily determined that the definition is consistent with the best reading of EPCA because it implements the objectives of the statute. DOE has considered all aspects of the GSL definition and has preliminarily identified the criteria pertinent to lamps that serve in general lighting applications and also preliminarily identified specialty products that should be exempt from the definition of GSL. Based on the discussion presented in this NOPR and that presented in the January 2017 Final Rules, DOE proposes a definition of GSL as set forth in the January 2017 Final Rules, which included candelabra base lamps and other lamps as GSLs based on the use of such lamps to satisfy lighting applications traditionally served by GSILs.

DOE is proposing to define ''general service lamp'' as a lamp intended to serve in general lighting applications and that has the following basic characteristics: (1) An ANSI base (with the exclusion of light fixtures, LED downlight retrofit kits, and exemptions for specific base types); (2) a lumen output of greater than or equal to 310 lumens and less than or equal to 3,300 lumens; (3) an ability to operate at or between 12 V, 24 V, 100 to 130 V, 220 to 240 V, or 277 V; and (4) no designation or label for use in non-general applications.

Regarding the fourth criteria, as in the January 2017 Final Rules, DOE proposes listing in the GSL definition each of the non-general applications identified or lamps used in such applications in order to clearly define the scope of the definition. Specifically, DOE proposes that ''general service lamp'' does not include: Appliance lamps; black light lamps; bug lamps; colored lamps; G shape lamps with a diameter of 5 inches or more as defined in ANSI C79.1–2002; general service fluorescent lamps; high intensity discharge lamps; infrared lamps; J, JC, JCD, JCS, JCV, JCX, JD, JS, and JT shape lamps that do not have Edison screw bases; lamps that have a wedge base or prefocus base; left-hand thread lamps; marine lamps; marine signal service lamps; mine service lamps; MR shape lamps that have a first number symbol equal to 16 (diameter equal to 2 inches) as defined in ANSI C79.1–2002, operate at 12 volts, and have a lumen output greater than or equal to 800; other fluorescent lamps; plant light lamps; R20 short lamps; reflector lamps that have a first number symbol less than 16 (diameter less than 2 inches) as defined in ANSI C79.1–2002, and that do not have E26/E24, E26d, E26/50x39, E26/53x39, E29/28, E29/53x39, E39, E39d, EP39, or EX39 bases; S shape or G shape lamps that have a first number symbol less than or equal to 12.5 (diameter less than or equal to 1.5625 inches) as defined in ANSI C79.1–2002; sign service lamps; silver bowl lamps; showcase lamps; specialty MR lamps; T-shape lamps that have a first number symbol less than or equal to 8 (diameter less than or equal to 1 inch) as defined in ANSI C79.1–2002, nominal overall length less than 12 inches, and that are not compact fluorescent lamps; and traffic signal lamps. As discussed in the following section, the proposed definition of GSL does not maintain the existing exemption for IRLs.

E. Incandescent Reflector Lamps

In the January 2017 Final Rules, DOE found that IRLs are widely used for general illumination just as GSILs are. 82 FR 7322, 7325. DOE continued that,

[8] This comment was submitted in response to DOE's proposal in September 2019 to not amend standards for GSILs. See docket number EERE–2019–BT–STD–0022.

[9] *Id.*

if EPCA mandated that IRLs continue being exempt from the definition of GSL, then they would present a convenient alternative product, subject to much less stringent standards than GSLs. *Id.* DOE further found that the statute did not unambiguously indicate that DOE must maintain the IRL exemption. *Id.* DOE acknowledged that the statute exempts IRLs from the definition of GSL and separately exempts ''reflector lamps'' from the definition of GSL because reflector lamps are a bulb shape excluded from the GSIL definition. *Id. See also* 42 U.S.C. 6291(30)(BB)(ii)(II); 42 U.S.C. 6291(30)(D)(ii)(XI). However, DOE found the reference to ''reflector lamps'' in the GSIL list of exempted lamps to be of a narrower scope than IRLs. 82 FR 7322, 7325–7326.

Based on its reading of EPCA and the listing of ''reflector lamp'' as a lamp exempted from the definition of GSIL (42 U.S.C. 6291(30)(D)(ii)(XI)) and the exemption of ''incandescent reflector lamps'' from the definition of GSL (42 U.S.C. 6291(30)(BB)(ii)(II)), DOE understands that it had two tasks regarding exemptions relevant for these lamps: With respect to ''reflector lamps,'' DOE's task is to assess whether as one of the relatively narrow twenty-two listed lamp types—the scope of which the statute does not make clear—these lamps have uses in general illumination, and whether sales data and other evidence indicate that such lamps are ready substitutes for lamps that are already included as GSLs; and for IRLs, DOE was required to analyze whether, in light of sales data and other evidence, such lamps are an important enough substitute for lamps already included as GSLs to warrant discontinuing their exemption. 82 FR 7322, 7326. DOE determined in both instances that the discontinuation of the exemption was warranted. 82 FR 7276, 7293; 82 FR 7322, 7329–7330.

In the September 2019 Withdrawal Rule, DOE stated that, upon additional review, DOE understands Congress's express statements in two distinct provisions that IRLs are not GSLs should be interpreted as meaning that Congress intended that DOE not consider IRLs to be GSLs. 84 FR 46661, 46667. DOE noted that it continues to have the authority to establish energy conservation standards applicable to IRLs under separate requirements set by Congress in 42 U.S.C. 6295(i)(3). *Id.*

Upon further review, DOE is reconsidering whether DOE has the authority to include IRLs as GSILs and/or GSLs. The September 2019 Withdrawal Rule concluded that because IRLs were twice excluded from the statute, once from the GSIL definition in 42 U.S.C. 6291(30)(D)(ii)(XI) and once from the GSL definition in 42 U.S.C. 6291(30)(BB)(ii)(II), that means Congress did not want the Secretary to include IRLs within the definition of GSL. 84 FR 46661, 46666. However, the authorization in EPCA for the Secretary to evaluate whether an exemption is to be continued does not limit such an evaluation to those lamps exempted by definition only once. Therefore, in this NOPR, DOE is reviewing its position in the September 2019 Withdrawal Rule that EPCA precludes consideration of the exemption for IRLs simply because they were exempted twice. 42 U.S.C. 6295(i)(6)(A)(i)(II) authorizes DOE to decide not to maintain IRLs as exempt and, as such, DOE proposes to amend the definitions of GSIL and GSL to discontinue the exemptions for these products. As also presented in the January 2017 Final Rules, DOE proposes to exempt from the definition of GSL reflector lamps that have a first number symbol less than 16 (diameter less than 2 inches) as defined in ANSI C79.1–2002 and that do not have E26/24, E26d, E26/50x39, E26/53x39, E29/28, E29/53x39, E39, E39d, EP39, or EX39 bases because they do not and likely cannot have equivalent replacements using more efficient technology. 82 FR 7276, 7310. This is consistent with the definitions adopted in the January 2017 Final Rules.

F. Supplemental Definitions

In the January 2017 Final Rules, DOE set forth a series of definitions in support of the statutory use of the terms and the amended definitions for GSL and GSIL. Specifically, DOE set forth definitions for ''Black light lamp,'' ''Bug lamp,'' ''Colored lamp,'' ''General service light-emitting diode (LED) lamp,'' ''General service organic lighting-emitting diode (OLED) lamp,'' ''Infrared lamp,'' ''Integrated lamp,'' ''LED Downlight Retrofit Kit,'' ''Lefthand thread lamp,'' ''Light fixture,'' ''Marine lamp,'' ''Marine signal service lamp,'' ''Mine service lamp,'' ''Nonintegrated lamp,'' ''Other fluorescent lamp,'' ''Pin base lamp,'' ''Plant light lamp,'' ''Reflector lamp,'' ''Showcase Lamp,'' ''Sign service lamp,'' ''Silver bowl lamp,'' ''Specialty MR lamp,'' and ''Traffic signal lamp.'' DOE also revised the definition of ''designed and marketed.'' 82 FR 7276, 7321–7322.

In the September 2019 Withdrawal Rule, DOE withdrew the supporting definitions finding them no longer necessary given the withdrawal of the amended definitions of GSL and GSIL. 84 FR 46661, 46662.

In this NOPR, DOE is proposing supporting definitions for those terms as set forth in the January 2017 Final Rules. DOE notes that the terms for which definitions are proposed are used both in the statutory definitions of GSL and GSIL, and the proposed regulatory definitions for GSL and GSIL. As presented in the January 2017 Final Rules, DOE has based the proposed definitions for these supplementary terms on a review of the market and input from stakeholders. 82 FR 7276, 7312–7316. As the supporting definitions define statutory terms, DOE initially finds these definitions necessary even in the absence of amended GSL and GSIL definitions.

G. Proposed Effective Date

For the proposed changes to amend the definition of GSL and GSIL in this NOPR, DOE is proposing a 60-day effective date. If finalized, lamps included in these amended definitions would be subject to any applicable standards for GSLs and GSILs. While this notice does not propose any new or amended standards or address the applicability of the 45 lm/W backstop requirement, DOE is reconsidering its previous conclusion regarding the applicability of EPCA's 45 lm/W backstop provision and has issued an RFI to that effect. 86 FR 28001 (May 25, 2021). In that rulemaking, DOE will address application of standards for those lamps proposed in this NOPR to be GSLs or GSILs—including, if determined to be applicable, the implementation of the 45 lm/W backstop requirement—and, consequently, the dates of required compliance for GSLs and GSILs.

DOE requests comment on the effective date for the definitions proposed in this NOPR were such definitions to be made final.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866

The Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') waived Executive Order 12866 (''E.O.'') 12866, ''Regulatory Planning and Review'' review of this rule.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule

that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*https://energy.gov/gc/office-general-counsel*).

DOE reviewed the definitions of GSL, GSILs, and related terms proposed in this NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. DOE notes that this proposed rule would merely define what constitutes a GSL and GSIL. Manufacturers of GSLs and GSILs are required to use DOE's test procedures to make representations and certify compliance with standards, if required. The test procedure rulemakings for CFLs, integrated LED lamps, and other GSLs addressed impacts on small businesses due to test procedure requirements. 81 FR 59386 (Aug. 29, 2016); 81 FR 43404 (July 1, 2016); 81 FR 72493 (Oct. 20, 2016). Further, as noted, DOE is considering EPCA's 45 lm/W backstop requirement for GSLs and has issued an RFI to that effect. 86 FR 28001. In that rulemaking, DOE plans to address the impact on small business manufacturers of GSLs and GSILs of implementing the backstop.

For this reason, DOE concludes and certifies that the proposed definitions would not have a significant economic impact on a substantial number of small entities, and the preparation of an IRFA is not warranted.

C. Review Under the Paperwork Reduction Act

Manufacturers of GSLs must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for GSLs and GSILs, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (Mar. 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE anticipates that this proposed rulemaking qualifies for categorical exclusion A5 because it is an interpretive rulemaking that does not change the environmental effect of the rule and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. 42 U.S.C. 6297. Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding that Section 3(a) review, section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a), (b). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *https://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

This proposed rulemaking does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rulemaking would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes amended definitions for GSL and GSIL, is not a significant energy action because the proposed definitions are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under Section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788 (''FEAA''). Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, Section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition. This proposal to amend the definitions of GSL and GSIL does not propose the use of any commercial standards.

M. Materials Incorporated by Reference

The proposed modifications to the definition of ''general service lamp'' and the associated supporting definitions reference the following commercial standards that are already incorporated by reference in 10 CFR 430.2:

(1) ANSI C78.20–2003, Revision of ANSI C78.20–1995 (''ANSI C78.20''), American National Standard for electric lamps—A, G, PS, and Similar Shapes with E26 Medium Screw Bases, approved October 30, 2003.

(2) ANSI C79.1–2002, American National Standard for Electric Lamps—Nomenclature for Glass Bulbs Intended for Use with Electric Lamps, approved September 16, 2002.

(3) CIE 13.3–1995 (''CIE 13.3''), Technical Report: Method of Measuring and Specifying Colour Rendering Properties of Light Sources, 1995, ISBN 3 900 734 57 7.

DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of Section 32(b) of the FEAA (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to adopting a final rule.

V. Public Participation

A. Attendance at the Webinar

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=4* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. antitrust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar/public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar/public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar/public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this proposed rulemaking. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on August 9, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 10, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by:

■ a. Adding in alphabetical order the definitions of ''Black light lamp,'' ''Bug lamp,'' ''Colored lamp,'' ''General service light-emitting diode (LED) lamp,'' ''General service organic lighting-emitting diode (OLED) lamp,'' ''Infrared lamp,'' ''Integrated lamp,'' ''LED Downlight Retrofit Kit,'' ''Left-hand thread lamp,'' ''Light fixture,'' ''Marine lamp,'' ''Marine signal service lamp,'' ''Mine service lamp,'' ''Non-integrated lamp,'' ''Other fluorescent lamp,'' ''Pin base lamp,'' ''Plant light lamp,'' ''Reflector lamp,'' ''Showcase Lamp,'' ''Sign service lamp,'' ''Silver bowl lamp,'' ''Specialty MR lamp,'' and ''Traffic signal lamp;'' and

■ b. Revising the definitions of ''Designed and marketed,'' ''General service incandescent lamp,'' and ''General service lamp.''

The additions and revisions read as follows:

§ 430.2 Definitions.

* * * * *

Black light lamp means a lamp that is designed and marketed as a black light lamp and is an ultraviolet lamp with the highest radiant power peaks in the UV–A band (315 to 400 nm) of the electromagnetic spectrum.

* * * * *

Bug lamp means a lamp that is designed and marketed as a bug lamp, has radiant power peaks above 550 nm on the electromagnetic spectrum, and has a visible yellow coating.

* * * * *

Colored lamp means a colored fluorescent lamp, a colored incandescent lamp, or a lamp designed and marketed as a colored lamp with either of the following characteristics (if multiple modes of operation are possible [such as variable CCT], either of the below characteristics must be maintained throughout all modes of operation):

(1) A CRI less than 40, as determined according to the method set forth in CIE Publication 13.3 (incorporated by reference; see § 430.3); or

(2) A CCT less than 2,500 K or greater than 7,000 K.

* * * * *

Designed and marketed means exclusively designed to fulfill the indicated application and, when distributed in commerce, designated and marketed solely for that application, with the designation prominently displayed on the packaging and all publicly available documents (*e.g.,* product literature, catalogs, and packaging labels). This definition applies to the following covered lighting products: Fluorescent lamp ballasts; fluorescent lamps; general service fluorescent lamps; general service incandescent lamps; general service lamps; incandescent lamps; incandescent reflector lamps; compact fluorescent lamps (including medium base compact fluorescent lamps); LED lamps; and specialty application mercury vapor lamp ballasts.

* * * * *

General service incandescent lamp means a standard incandescent or halogen type lamp that is intended for general service applications; has a medium screw base; has a lumen range of not less than 310 lumens and not more than 2,600 lumens or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens; and is capable of being operated at a voltage range at least partially within 110 and 130 volts; however, this definition does not apply to the following incandescent lamps—

(1) An appliance lamp;
(2) A black light lamp;
(3) A bug lamp;
(4) A colored lamp;
(5) A G shape lamp with a diameter of 5 inches or more as defined in ANSI C79.1–2002 (incorporated by reference; see § 430.3);
(6) An infrared lamp;
(7) A left-hand thread lamp;
(8) A marine lamp;
(9) A marine signal service lamp;
(10) A mine service lamp;
(11) A plant light lamp;
(12) An R20 short lamp;
(13) A sign service lamp;
(14) A silver bowl lamp;
(15) A showcase lamp; and
(16) A traffic signal lamp.

General service lamp means a lamp that has an ANSI base; is able to operate at a voltage of 12 volts or 24 volts, at or between 100 to 130 volts, at or between

220 to 240 volts, or of 277 volts for integrated lamps (as defined in this section), or is able to operate at any voltage for non-integrated lamps (as defined in this section); has an initial lumen output of greater than or equal to 310 lumens (or 232 lumens for modified spectrum general service incandescent lamps) and less than or equal to 3,300 lumens; is not a light fixture; is not an LED downlight retrofit kit; and is used in general lighting applications. General service lamps include, but are not limited to, general service incandescent lamps, compact fluorescent lamps, general service light-emitting diode lamps, and general service organic light emitting diode lamps. General service lamps do not include:

(1) Appliance lamps;
(2) Black light lamps;
(3) Bug lamps;
(4) Colored lamps;
(5) G shape lamps with a diameter of 5 inches or more as defined in ANSI C79.1–2002 (incorporated by reference; see § 430.3);
(6) General service fluorescent lamps;
(7) High intensity discharge lamps;
(8) Infrared lamps;
(9) J, JC, JCD, JCS, JCV, JCX, JD, JS, and JT shape lamps that do not have Edison screw bases;
(10) Lamps that have a wedge base or prefocus base;
(11) Left-hand thread lamps;
(12) Marine lamps;
(13) Marine signal service lamps;
(14) Mine service lamps;
(15) MR shape lamps that have a first number symbol equal to 16 (diameter equal to 2 inches) as defined in ANSI C79.1–2002 (incorporated by reference; see § 430.3), operate at 12 volts, and have a lumen output greater than or equal to 800;
(16) Other fluorescent lamps;
(17) Plant light lamps;
(18) R20 short lamps;
(19) Reflector lamps (as defined in this section) that have a first number symbol less than 16 (diameter less than 2 inches) as defined in ANSI C79.1–2002 (incorporated by reference; see § 430.3) and that do not have E26/E24, E26d, E26/50x39, E26/53x39, E29/28, E29/53x39, E39, E39d, EP39, or EX39 bases;
(20) S shape or G shape lamps that have a first number symbol less than or equal to 12.5 (diameter less than or equal to 1.5625 inches) as defined in ANSI C79.1–2002 (incorporated by reference; see § 430.3);
(21) Sign service lamps;
(22) Silver bowl lamps;
(23) Showcase lamps;
(24) Specialty MR lamps;
(25) T-shape lamps that have a first number symbol less than or equal to 8 (diameter less than or equal to 1 inch) as defined in ANSI C79.1–2002 (incorporated by reference; see § 430.3), nominal overall length less than 12 inches, and that are not compact fluorescent lamps (as defined in this section);
(26) Traffic signal lamps.

General service light-emitting diode (LED) lamp means an integrated or nonintegrated LED lamp designed for use in general lighting applications (as defined in this section) and that uses light emitting diodes as the primary source of light.

General service organic light-emitting diode (OLED) lamp means an integrated or non-integrated OLED lamp designed for use in general lighting applications (as defined in this section) and that uses organic light-emitting diodes as the primary source of light.

* * * * *

Infrared lamp means a lamp that is designed and marketed as an infrared lamp; has its highest radiant power peaks in the infrared region of the electromagnetic spectrum (770 nm to 1 mm); has a rated wattage of 125 watts or greater; and which has a primary purpose of providing heat.

* * * * *

Integrated lamp means a lamp that contains all components necessary for the starting and stable operation of the lamp, does not include any replaceable or interchangeable parts, and is connected directly to a branch circuit through an ANSI base and corresponding ANSI standard lampholder (socket).

* * * * *

LED Downlight Retrofit Kit means a product designed and marketed to install into an existing downlight, replacing the existing light source and related electrical components, typically employing an ANSI standard lamp base, either integrated or connected to the downlight retrofit by wire leads, and is a retrofit kit. LED downlight retrofit kit does not include integrated lamps or non-integrated lamps.

Left-hand thread lamp means a lamp with direction of threads on the lamp base oriented in the left-hand direction.

* * * * *

Light fixture means a complete lighting unit consisting of light source(s) and ballast(s) or driver(s) (when applicable) together with the parts designed to distribute the light, to position and protect the light source, and to connect the light source(s) to the power supply.

* * * * *

Marine lamp means a lamp that is designed and marketed for use on boats and can operate at or between 12 volts and 13.5 volts.

Marine signal service lamp means a lamp that is designed and marketed for marine signal service applications.

* * * * *

Mine service lamp means a lamp that is designed and marketed for mine service applications.

* * * * *

Non-integrated lamp means a lamp that is not an integrated lamp.

* * * * *

Other fluorescent lamp means low pressure mercury electric-discharge sources in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light and include circline lamps and include double-ended lamps with the following characteristics: Lengths from one to eight feet; designed for cold temperature applications; designed for use in reprographic equipment; designed to produce radiation in the ultraviolet region of the spectrum; impact-resistant; reflectorized or aperture; or a CRI of 87 or greater.

* * * * *

Pin base lamp means a lamp that uses a base type designated as a single pin base or multiple pin base system.

* * * * *

Plant light lamp means a lamp that is designed to promote plant growth by emitting its highest radiant power peaks in the regions of the electromagnetic spectrum that promote photosynthesis: Blue (440 nm to 490 nm) and/or red (620 to 740 nm), and is designed and marketed for plant growing applications.

* * * * *

Reflector lamp means a lamp that has an R, PAR, BPAR, BR, ER, MR, or similar bulb shape as defined in ANSI C78.20 and ANSI C79.1–2002 (both incorporated by reference; see § 430.3) and is used to provide directional light.

* * * * *

Showcase lamp means a lamp that has a T shape as specified in ANSI C78.20 and ANSI C79.1–2002 (both incorporated by reference; see § 430.3), is designed and marketed as a showcase lamp, and has a maximum rated wattage of 75 watts.

* * * * *

Sign service lamp means a vacuum type or gas-filled lamp that has sufficiently low bulb temperature to permit exposed outdoor use on highspeed flashing circuits, is designed and marketed as a sign service lamp, and has a maximum rated wattage of 15 watts.

Silver bowl lamp means a lamp that has an opaque reflective coating applied

directly to part of the bulb surface that reflects light toward the lamp base and that is designed and marketed as a silver bowl lamp.

* * * * *

Specialty MR lamp means a lamp that has an MR shape as defined in ANSI C79.1–2002 (incorporated by reference; see § 430.3), a diameter of less than or equal to 2.25 inches, a lifetime of less than or equal to 300 hours, and that is designed and marketed for a specialty application.

* * * * *

Traffic signal lamp means a lamp that is designed and marketed for traffic signal applications and has a lifetime of 8,000 hours or greater.

* * * * *

[FR Doc. 2021–17346 Filed 8–18–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0682; Project Identifier MCAI–2021–00474–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes; and Models A320 and A321 series airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 4, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0682.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0682; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0682; Project Identifier MCAI–2021–00474–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0108, dated April 20, 2021 (EASA AD 2021–0108) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are

not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability. Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after December 9, 2020 must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

EASA AD 2021–0108 specifies that it requires a task (limitation) already required by EASA AD 2020–0067 (which corresponds to FAA AD 2020–22–16, Amendment 39–21312 (85 FR 70439, November 5, 2020) (AD 2020–22–16)) and invalidates (terminates) prior instructions for that task. This proposed AD would terminate the limitations of Task 262300–00001–1–C, as required by paragraph (i) of AD 2020–22–16, for airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before January 17, 2020 only.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address a safety-significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition. See the MCAI for additional background information.

Related Service information Under 1 CFR Part 51

EASA AD 2021–0108 describes new or more restrictive airworthiness limitations for certification maintenance requirements. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA has evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2021–0108 described previously, as incorporated by reference. Any differences with EASA AD 2021–0108 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0108 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0108 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0108 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0108. Service information required by EASA AD 2021–0108 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0682 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in the AMOCs paragraph under ''Other FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,728 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA has determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Airbus SAS: Docket No. FAA–2021–0682; Project Identifier MCAI–2021–00474–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 4, 2021.

(b) Affected ADs

This AD affects AD 2020–22–16, Amendment 39–21312 (85 FR 70439, November 5, 2020) (AD 2020–22–16).

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before December 9, 2020.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address a safety-significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0108, dated April 20, 2021 (EASA AD 2021–0108).

(h) Exceptions to EASA AD 2021–0108

(1) Where EASA AD 2021–0108 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0108 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0108 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2021–0108 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0108, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) of EASA AD 2021–0108 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0108 does not apply to this AD.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0108.

(j) Terminating Action for Certain Requirements in AD 2020–22–16

Accomplishing the actions required by this AD terminates the limitations of Task 262300–00001–1–C, as required by paragraph (i) of AD 2020–22–16, for airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before January 17, 2020 only.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (k)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in

an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) For information about EASA AD 2021–0108, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0682.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

Issued on August 12, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–17679 Filed 8–18–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0684; Project Identifier MCAI–2021–00194–T]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 7X, FALCON 900EX, and FALCON 2000EX airplanes. This proposed AD was prompted by a report of an improper heat treatment process applied during the manufacturing of certain titanium screws. This proposed AD would require replacement of certain titanium screws, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 4, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0684.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0684; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0684; Project Identifier MCAI–2021–00194–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0047, dated February 16, 2021 (EASA AD 2021–0047) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Dassault Aviation Model FALCON 7X, FALCON 900EX, and FALCON 2000EX airplanes.

This proposed AD was prompted by a report of an improper heat treatment process applied during the manufacturing of certain Decomatic titanium screws. The improper heat treatment process led to a hydrogen

concentration rate in the material of the affected screws that was above the allowable limit. The FAA is proposing this AD to address failure of an affected screw installed in a critical location, possibly resulting in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0047 describes procedures for replacement of certain Decomatic titanium screws (including an inspection of the bore dimension and corrective actions (oversizing or repair)). The EASA AD also restricts installation of certain Decomatic titanium screws. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0047 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0047 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0047 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0047 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0047. Service information required by EASA AD 2021–0047 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0684 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 90 work-hours × $85 per hour = Up to $7,650	$0	Up to $7,650	Up to $229,500.

* The FAA has received no definitive information regarding cost estimates for these parts.

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Dassault Aviation: Docket No. FAA–2021–0684; Project Identifier MCAI–2021–00194–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 4, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation airplanes identified in paragraphs (c)(1) through (3) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0047, dated February 16, 2021 (EASA AD 2021–0047).

(1) Model FALCON 7X airplanes.

(2) Model FALCON 900EX airplanes.

(3) Model FALCON 2000EX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 51, Standard Practices/Structures.

(e) Reason

This AD was prompted by a report of an improper heat treatment process applied during the manufacturing of certain Decomatic titanium screws. The FAA is issuing this AD to address failure of an affected screw installed in a critical location, possibly resulting in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0047.

(h) Exceptions to EASA AD 2021–0047

(1) Where EASA AD 2021–0047 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0047 does not apply to this AD.

(3) Where EASA AD 2021–0047 specifies to ''replace each serviceable part,'' for this AD that replacement includes an inspection of the bore dimension and corrective actions (oversizing or repair), as specified in the service information referenced in EASA AD 2021–0047.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0047 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) For information about EASA AD 2021–0047 contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0684.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

Issued on August 12, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–17677 Filed 8–18–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1530–AA26

Federal Government Participation in the Automated Clearing House

AGENCY: Fiscal Service, Bureau of the Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Department of the Treasury, Bureau of the Fiscal Service (Fiscal Service) is proposing to amend its regulation governing the use of the Automated Clearing House (ACH) Network by Federal agencies. Our regulation adopts, with some exceptions, the Operating Rules Operating Guidelines (Operating Rules & Guidelines) developed by Nacha as the rules governing the use of the ACH Network by Federal agencies. We are issuing this proposed rule to address changes that Nacha has made since the publication of the 2019 Operating Rules & Guidelines. These changes include amendments set forth in the 2020 and 2021 Operating Rules & Guidelines, including supplements thereto, issued on or before March 31, 2021.

DATES: Comments on the proposed rule must be received by October 18, 2021.

ADDRESSES: Comments on this rule, identified by docket FISCAL–2021–0002, should only be submitted using the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *Mail:* Ian Macoy, Bureau of the Fiscal Service, 3201 Pennsy Drive, Building E, Landover, MD 20785.

The fax and email methods of submitting comments on rules to Fiscal Service have been decommissioned.

Instructions: All submissions received must include the agency name (Bureau of the Fiscal Service) and docket number FISCAL–2021–0002 for this rulemaking. In general, comments received will be published on *Regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. You can download this proposed rule at the following website: *https://www.fiscal.treasury.gov/ach/.*

In accordance with the U.S. government's eRulemaking Initiative, Fiscal Service publishes rulemaking information on *www.regulations.gov. Regulations.gov* offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

FOR FURTHER INFORMATION CONTACT: Ian Macoy, Director of Settlement Services, at (202) 874–6835 or *ian.macoy@fiscal.treasury.gov;* or Frank J. Supik, Senior Counsel, at *frank.supik@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Title 31 CFR part 210 (Part 210) governs the use of the ACH Network by Federal agencies. The ACH Network is a nationwide electronic fund transfer system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment-related information among participating financial institutions.

The ACH Network facilitates payment transactions between several participants. These participants include the:

- Originator: A company or individual that agrees to initiate an ACH entry according to an arrangement with a Receiver.
- Originating Depository Financial Institution (ODFI): An institution that receives the payment instruction from the Originator and forwards the ACH entry to the ACH Operator.
- ACH Operator: A central clearing facility that receives entries from ODFIs, distributes the entries to appropriate Receiving Depository Financial Institutions, and performs settlement functions for the financial institutions.
- Receiving Depository Financial Institution (RDFI): An institution that receives entries from the ACH Operator and posts them to the account of its depositors (Receivers).
- Receiver: An organization or consumer that has authorized an Originator to initiate an ACH entry to the Receiver's account with the RDFI.
- Third-Party Service Provider: An entity other than the Originator, ODFI, or RDFI that performs any functions on behalf of the Originator, ODFI, or RDFI in connection with processing ACH entries. These functions may include, for example, creating ACH files on behalf of an Originator or ODFI, or acting as a sending point or receiving point on behalf of an ODFI or RDFI.

Rights and obligations among participants in the ACH Network are governed by Nacha's Operating Rules & Guidelines. The Operating Rules & Guidelines establish standards for sending and receiving ACH entries, provide specifications for the electronic transmission of transaction information, set forth the rights and obligations of the entities listed above when transmitting, receiving or returning ACH entries, and cover other related matters. The Operating Rules & Guidelines also provide guidance regarding best practices to ACH Network participants. There is an industry consensus that the Operating Rules & Guidelines provide a uniform set of standards for ACH transactions and that these standards enable efficient transaction processing.

Part 210 incorporates the Operating Rules & Guidelines by reference, with certain exceptions. From time to time, the Fiscal Service amends Part 210 to address changes that Nacha periodically makes to the Operating Rules & Guidelines or to revise the regulation as otherwise appropriate. Given their coverage across the payment system and to ensure consistent application to all ACH Network participants, the Federal Government generally adopts changes to the Operating Rules & Guidelines unless the changes address enforcement and compliance of the Operating Rules & Guidelines, would adversely impact government operations, or are irrelevant to Federal agency participation in the ACH Network.

Currently, Part 210 incorporates the 2019 Operating Rules & Guidelines, subject to certain exceptions. Nacha has adopted several changes since the publication of the 2019 Operating Rules & Guidelines, as reflected in the 2021 Operating Rules & Guidelines and supplements thereto.[1] We are proposing to incorporate in Part 210 most, but not all, of these changes.

We are requesting public comment on all the proposed amendments to Part 210.

II. Summary of Proposed Rule Changes

Since the publication of the 2019 Operating Rules & Guidelines, Nacha published two versions of the Operating Rules & Guidelines, the 2020 Operating Rules & Guidelines and the 2021 Operating Rules & Guidelines. Below, we outline the major changes that were published in these updates.

A. 2020 Operating Rules & Guidelines Changes

The 2020 *Operating Rules & Guidelines* proposed several changes to the Operating Rules and Guidelines. These changes included raising the Same Day ACH dollar limit, differentiating the codes associated with certain return transactions, modifying data security requirements, clarifying fraud detection standards for WEB Debit transactions, and adding a new Same Day ACH processing window.

Same Day ACH Dollar Limit Increase

On March 31, 2021, Nacha approved a rule change to update the Same Day ACH per-transaction dollar limit from $100,000 to $1,000,000. At implementation, both Same Day ACH credits and Same Day ACH debits will be eligible for Same Day ACH processing up to $1,000,000 per transaction. Nacha's rule will become effective on March 18, 2022 for all non-Federal Government ACH Network participants.

We propose to adopt this rule, effective March 18, 2022. Acceptance of this rule will enable individuals and entities to make Same-Day ACH payments of up to $1,000,000 to the government and will enable Federal payments in the same amount. Failure to adopt this rule at the same time as other ACH Network participants may prevent clearance and processing of certain high-value transactions. For example, a taxpayer would be unable to make a tax payment exceeding $100,000 to the Federal Government via Same-Day ACH, even though it could initiate a similarly-sized Same-Day ACH payment to a private party. The failed transaction and resulting confusion could negatively impact both the taxpayer and the Federal Government.

Differentiating Unauthorized Return Codes

The 2020 Operating Rules & Guidelines changed the usage of certain Nacha ''Return Reason Codes,'' which afforded financial institutions more insight into the reason why a transaction was returned.

Under the prior rules, Nacha used one Return Reason Code (the R10 code) as a catch-all to identify transactions that were returned for several underlying return reasons, including some for which a valid authorization existed. Under the revised Rule, Nacha re-purposed another Return Reason Code (the R11 code) to allow ACH network participants to more readily identify ACH transactions that are being returned due to an error, even though an authorization exists for the transaction (*e.g.,* if the authorization is for a different amount and/or date). The newly re-purposed code is used only to identify the return of a debit transaction in which there is an error, but for which there is an authorization.[2]

The Operating Rules & Guidelines will treat returned transactions using either code (R10 and R11) as unauthorized. However, an Originator will be permitted to correct the underlying error in an R11 return (if possible). Subject to certain other requirements, the Originator may be

[1] The 2021 *Operating Rules & Guidelines* also incorporates changes that Nacha previously adopted and incorporated into the 2020 *Operating Rules & Guidelines.* This Notice of Proposed Rulemaking also highlights applicable changes to the Operating Rules & Guidelines that were incorporated into the 2020 *Operating Rules & Guidelines.*

[2] The 2021 Operating Rules & Guidelines implements a second phase of this rule. This second phase is discussed below.

able to resubmit the underlying ACH transaction without obtaining a new authorization.[3]

We propose to adopt this change. Doing so will allow the Fiscal Service to remain consistent with industry practice, allowing for consistent operation across the ACH network. Moreover, using the R11 return code will provide greater insight into the reasons for the return of certain transactions.

Supplemental Fraud Detection Standards for WEB Debits

The Fiscal Service previously adopted Nacha's updated fraud detection standards for WEB debit transactions.[4] Fiscal Service adopted this change with a delayed effective date of March 22, 2022.[5] The updated rule clarifies that Nacha requirements for a ''commercially reasonable fraudulent transaction detection system'' include the use of account validation services for WEB debit transactions. We propose to adopt the updated rule, which is non-controversial.

B. 2021 Operating Rules & Guidelines Changes

The 2021 Operating Rules & Guidelines implement several additional changes beyond those in the 2020 Operating Rules & Guidelines. These changes include, but are not limited to, clarifying certain portions of the enforcement provisions of the Operating Rules & Guidelines, implementing a new Same Day ACH processing window, implementing a second phase of Nacha's return code rule, establishing a time limit on certain warranty claims, and implementing Nacha's contact registry.

Enforcement

The 2021 Operating Rules & Guidelines defines an egregious violation within the context of rules enforcement.

We are proposing to not adopt this amendment. Under 31 CFR 210.2(d), the enforcement provisions of the Operating Rules & Guidelines are inapplicable to Federal agencies.

Differentiating Unauthorized Return Reasons

As discussed above, Nacha repurposed the R11 Return Reason code to further differentiate between certain returned debit ACH transactions. The 2021 Operating Rules & Guidelines implements a second phase of this rule change, which will apply Nacha's existing Unauthorized Entry Fee to ACH debit entries that are returned with the newly repurposed code. As noted above, these transactions are associated with an authorization of a debit transaction when there is an error or defect in the payment such that the entry does not conform to the terms of the authorization.

The Fiscal Service proposes to adopt this rule change. Adoption of this change maintains consistency with other ACH Network participants and creates additional incentives them to minimize the amount of unauthorized (or incorrectly authorized) ACH transactions.

Limitation on Warranty Claims

Nacha's 2021 Operating Rules & Guidelines impose time limits on an RDFI's ability to make a claim against an ODFI's authorization warranty.

The Operating Rules & Guidelines require an ODFI to warrant that an ACH entry has been properly authorized by the Receiver. Under the prior rules, there was no time limit on the ODFI's warranties. Instead, these limits were determined by state statutes of limitations, which may vary.

The change sets forth different time periods, depending upon whether the transaction affects consumer and non-consumer accounts. This rule allows an RDFI to make a claim for one year from the settlement date of an entry to a non-consumer account. In the case of an entry to a consumer account, the RDFI may make a claim for two years from the entry's Settlement Date. In addition, the RDFI can make a claim for entries settling within 95 calendar days from the Settlement Date of the first unauthorized debit to a consumer account.

The Fiscal Service proposes to adopt this rule change. Adoption will reduce the number of claims for older transactions, although liability in some instances may be shifted to the Federal Government. On balance, the Federal Government may benefit from uniform time limits that allow the opportunity to assert warranty claims when applicable, while also establishing firm time limits for asserting and defending claims.

Supplementing Data Security Requirements

Nacha previously expanded its Data Security Requirements rule, which the Fiscal Service adopted,[6] but in the 2021 Operating Rules & Guidelines Nacha updated the effective date of part of this rule to be June 30, 2022. The rule expanded the existing ACH Security Framework to explicitly require large, non-financial institution Originators, Third-Party Service Providers, and Third-Party Senders to protect account numbers used in the initiation of ACH entries by rendering them unreadable when stored electronically.

The Fiscal Service proposes to adopt the new effective date. The Fiscal Service continues to support the expansion of existing security requirements to require large non-financial institution Originators to protect account numbers used to initiate ACH transactions by rendering them unreadable while stored electronically.

ACH Contact Registry

In April 2019, Nacha approved a rule creating an ACH contact registry. Under this rule, all ACH financial institutions are required to register contact information for their ACH operations and fraud and/or risk management areas. Financial institutions may voluntarily register contacts for additional personnel or departments at their discretion. The contact information is available to other registered ACH participating financial institutions, Payments Associations, ACH Operators, and Nacha to use in the event of ACH-related system outages, erroneous payments, duplicates, reversals, fraudulent payments and any other use within scope, such as identifying the proper contact for letters of indemnity. The contact information includes Routing and Transit Numbers (RTNs).

Nacha is implementing the ACH Contact Registry rule in two phases. Phase 1 became effective on July 1, 2020, the date on which the registration portal was opened for ''Participating Depository Financial Institutions'' to begin to submit and query contact information. Under Phase 2, Nacha's enforcement authority for the Rule becomes effective.

We are proposing to not adopt this amendment. Although, participation in the registry can be expected to provide some benefits to the industry, all Federal Government RTNs are controlled by Treasury through the Fiscal Service. Fiscal Service prohibits debit origination to all Treasury-controlled ACH RTNs. To mitigate the risk of inappropriate use of any Treasury RTNs, Treasury prohibits their publication. Joining the registry will unnecessarily expose Treasury RTNs to parties without a need to know that information. Moreover, under 31 CFR

[3] Some transaction errors, such as errors due to the failure to provide certain notices or the failure to use an acceptable ''source document,'' cannot be corrected. In those cases, the Originator will be required to submit a new ACH entry.

[4] *See* 85 FR 15,715 (Mar. 19, 2020).

[5] *Id.*

[6] *See* 85 FR 15,715 (Mar. 19, 2020).

210.2(d), the enforcement provisions of the Operating Rules & Guidelines are inapplicable to Federal agencies.

Reversals

The 2021 Operating Rules & Guidelines also clarify the proper circumstances under which an ACH entry may be reversed. Currently, the Operating Rules & Guidelines define a limited number of permissible reasons for reversing entries; however, they do not explicitly address improper uses of reversals. The amendments to the Operating Rules & Guidelines will specifically state that the initiation of reversing entries or files for any reason other than those explicitly permissible under the Operating Rules & Guidelines is prohibited and define non-exclusive examples of circumstances in which the origination of Reversals is improper.

The reversals rule will also establish additional formatting requirements for reversals; limit the ability to modify the contents of other fields in a reversing entry to allow changes only to the extent necessary to facilitate proper processing of the reversal; explicitly permit an RDFI to return an improper reversal; and expand the permissible reasons for a Reversing Entry to include an error in the effective entry date.

The Fiscal Service proposes to adopt this rule. The rule will clarify the circumstances under which entries can be reversed and assist in the efficient processing of ACH transactions involving the Federal Government.

Meaningful Modernization

The 2021 Operating Rules & Guidelines also contain five amendments that Nacha characterizes as ''Meaningful Modernization.'' These five amendments are designed to improve and simplify the ACH user experience by facilitating the adoption of new technologies and channels for the authorization and initiation of ACH payments; reducing barriers to use of the ACH Network; providing clarity and increasing consistency around certain ACH authorization processes; and reducing certain administrative burdens related to ACH authorizations.

Specifically, the five rules will:

- Explicitly define the use of standing authorizations for consumer ACH debits;
- Define and allow for oral authorization of consumer ACH debits beyond telephone calls;
- Clarify and provide greater consistency of ACH authorization standards across payment initiation channels;
- Reduce the administrative burden of providing proof of authorization; and
- Better facilitate the use of electronic and oral Written Statements of Unauthorized Debit.

Standing Authorizations

The current authorization framework for consumer ACH debits encompasses recurring and single payments. Recurring payments occur at regular intervals, with no additional action required by the consumer to initiate the payment and are for the same or a similar amount. A single entry is a one-time payment and can be between parties that have no previous relationship. ACH Originators that have, or want to use, a different model for ongoing commerce do not have specific rules for payments that are a hybrid, falling somewhere in between recurring and single entries.

This rule change will define a Standing Authorization as an advance authorization by a consumer of future debits at various intervals. The consumer would initiate the future debits by additional actions, which differs from the requirements for recurring ACH transactions. The rule will allow the use of different Standard Entry Class codes. By allowing standing authorizations, Nacha proposes to fill the gap between single and recurring payments and enable businesses and consumers to make more flexible payment arrangements for relationships that are ongoing in nature.

The Fiscal Service proposes adoption of the amendment. The Fiscal Service believes that the Standing Authorization rule may increase options for initiating ACH transactions with the Federal Government. Although the Federal Government is not required to engage in Standard Authorizations, adoption of this rule would allow agencies to adopt new payment processes that better fit their needs, and the need of their customers.

Oral Authorizations

The current authorization language in the Operating Rules & Guidelines does not provide for oral authorizations of an ACH payment outside of a telephone call. Only the Telephone-Initiated Entry (TEL) Standard Entry Class Code has requirements to address the risks specific to an oral authorization.

The Oral Authorizations rule will define and allow Oral Authorizations as a valid authorization method for consumer debits distinct from a telephone call. Nacha asserts that enabling the broader use of Oral Authorizations will allow businesses to adopt ACH payments in transactional settings that make use of verbal interactions and voice-related technologies.

Under the rule, any oral authorization obtained via any channel will need to meet the requirement of an ''oral authorization.'' An oral authorization obtained over the internet that is not a telephone call also will need to meet the risk and security requirements that currently apply to internet-Initiated/Mobile (VEB) ACH entries. The rule will allow for standing authorizations to be obtained orally. In addition, the rule will allow for subsequent entries initiated under a standing authorization to be initiated through voice commands, instructions, or affirmations.

The Fiscal Service proposes adoption of the amendment. The Fiscal Service believes that the Oral Authorization rule may increase options for initiating efficient ACH transactions with the Federal Government.

Other Authorization Issues

The 2021 Operating Rules & Guidelines also include rules changes grouped as Other Authorization Issues, which cover other modifications and re-organizations of the general authorization rules for clarity, flexibility, and consistency.

The rule will re-organize the general authorization rules to better incorporate Standing Authorizations, Oral Authorizations, and other changes. In addition, the amended rule will explicitly state that authorization of any credit entry to a consumer account and any entry to a non-consumer account can be by any method allowed by law or regulation. Only consumer debit authorizations require a writing that is signed or similarly authenticated. The amended rule also will require all authorizations to meet the standards of ''readily identifiable'' and ''clear and readily understandable terms,'' which aim to reduce the incidence of erroneous transactions. Finally, the rule will apply the ''minimum data element'' standards that currently are only stated in the rules for Telephone-Initiated Entries to all consumer debit authorizations.

The Fiscal Service proposes adoption of the amendments. The Fiscal Service believes that these rule amendments will benefit the Federal Government and those who participate in ACH transactions with it. By adopting these amendments, the Federal Government will remain current with standard industry practice and benefit from the increased flexibility afforded by the authorization rules.

Alternative to Proof of Authorization

The 2021 Operating Rules & Guidelines also give an ACH Originator and Originator the option of accepting a return of a transaction in lieu of providing a copy of an authorization. Under the current Rules, if an RDFI requests proof of authorization of a transaction, an Originator is required to provide proof of authorization to its ODFI in such time that the ODFI can respond to the RDFI's request within ten banking days. Nacha reports that some ODFIs and Originators would prefer to agree to accept the return of the debit rather than expend the time and resources necessary to provide proof of authorization.

Nacha believes that the ''Alternative to Proof of Authorization'' rule will reduce an administrative burden on ODFIs and their Originators for providing proof of authorization in every instance in which it is requested by an RDFI. By allowing an alternative, the rule is intended to help reduce the costs and time needed to resolve some exceptions in which proof of authorization in requested. However, if the RDFI still needs proof of authorization, the ODFI and its Originator must provide the proof of authorization within ten days of the RDFI's subsequent request.

The Fiscal Service proposes adoption of these amendments. The Fiscal Service believes that these rule amendments may make certain ACH transaction processes more efficient. For example, in certain instances a Receiver of an ACH transaction may dispute the authorization. If the Federal Government determines that it is inefficient to provide the requested proof of authorization, the new rule will allow it to return the ACH instead of expending resources to locate and transmit the information to the RDFI and Receiver.

Written Statement of Unauthorized Debit via Electronic or Oral Methods

The 2021 Operating Rules & Guidelines changes the ''Written Statement of Unauthorized Debit'' rule, which makes an RDFI responsible for obtaining a consumer's Written Statement of Unauthorized Debit (WSUD) prior to returning a debit as unauthorized. However, the current Operating Rules & Guidelines do not explicitly address electronically or orally provided WSUDs. Instead, they explicitly allow electronic records and electronic signatures generally, which has resulted in confusion about the electronic or oral acceptance of WSUDs. Nacha reports that anecdotal evidence suggests that the significant majority of WSUDs are still being obtained via paper using a wet signature.

The Written Statement of Unauthorized Debit via Electronic or Oral Methods rule reduces an administrative burden on RDFIs and their customers. It clarifies and makes explicit that an RDFI may obtain a consumer's WSUD as an electronic record, and an RDFI may accept a consumer's electronic signature, regardless of its form or the method used to obtain it. These changes will emphasize that WSUDs may be obtained and signed electronically, which could include the same methods permissible for obtaining a consumer debit authorization.

The Fiscal Service proposes adoption of these amendments. The Fiscal Service believes that the amendments to this rule may increase the efficiency of ACH transactions involving the Federal Government by explicitly allowing electronic records and signatures to be used for written statements of unauthorized debits. This may allow ACH network participants to expedite the processing of allegedly fraudulent electronic transactions involving the Federal Government and other parties.

Minor Rules Topics

These amendments change several areas of the Operating Rules & Guidelines to address minor issues or correct errata. These changes have little-to-no impact on ACH participants and no material impact on the Federal Government's participation in the ACH network. NACHA's minor rule amendments became effective on various dates, according to the date of the Nacha errata correction or other message.

The Fiscal Service proposes to adopt these minor rule amendments.

III. Section-by-Section Analysis

In order to incorporate in Part 210 the Operating Rules & Guidelines changes that we are accepting, we are replacing references to the 2019 Rules & Guidelines with references to the 2021 Operating Rules & Guidelines.

210.2(a)

We are proposing to amend the reference to NACHA—The Electronic Payments Association (NACHA) to simply refer to Nacha.

§ 210.2(b)

We are proposing to amend the definition of ''applicable ACH Rules'' at § 210.2(d) by replacing the reference to the ''2019 NACHA Operating Rules and Guidelines'' with a reference to the ACH Rules with an effective date on or before March 31, 2021, as published in ''2021 Nacha Operating Rules & Guidelines'' and supplements thereto, including the rule change adopted on March 31, 2021 that will increase the Same Day ACH limit to $1 million, effective March 18, 2022. In addition, we are proposing to expand the list of Operating Rules & Guidelines that are not incorporated by reference to include the Operating Rules & Guidelines governing the Participating DFI registry.

We are proposing to amend § 210.3(b) by replacing the references to the ''2019 NACHA Operating Rules & Guidelines'' with references to ''Nacha's 2021 Operating Rules & Guidelines,'' as amended through March 31, 2021.

§ 210.6

We are proposing to amend paragraph (g) by replacing the reference to the ''2019 NACHA Operating Rules and Guidelines'' with a reference to the ''2021 Nacha Operating Rules & Guidelines.''

IV. Incorporation by Reference

In this NPRM, Fiscal Service is proposing to incorporate by reference the 2021 Operating Rules & Guidelines, including Supplement #1–2021, as amended through March 31, 2021. The Office of **Federal Register** (OFR) regulations require that agencies discuss in the preamble of a proposed rule ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. In addition, the preamble of the proposed rule must summarize the material. 1 CFR 51.5(a). In accordance with OFR's requirements, the discussion in the Supplementary Information section summarizes the 2021 Operating Rules & Guidelines. Financial institutions utilizing the ACH Network are bound by the Operating Rules & Guidelines and have access to them in the course of their everyday business. The Operating Rules & Guidelines are available as a bound book or in online form from Nacha—The Electronic Payments Association, 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171, tel. 703–561–1100, *info@nacha.org.*

V. Procedural Analysis

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For

example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make the rule easier to understand.

Regulatory Planning and Review

The proposed rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule imposes on the Federal Government a number of changes that Nacha has already adopted and imposed on private sector entities that utilize the ACH Network. The proposed rule does not impose any additional burdens, costs or impacts on any private sector entities, including any small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the proposed rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, Incorporation by reference.

Words of Issuance

For the reasons set out in the preamble, the Fiscal Service proposes to amend 31 CFR part 210 as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

■ 2. In § 210.2:
■ a. Revise paragraph (a) and the introductory text to paragraph (d);
■ b. Redesignate paragraphs (d)(2) through (7) as paragraphs (d)(3) through (8); and
■ c. Add new paragraph (d)(2).

The revisions and addition read as follows:

§ 210.2 Definitions.

* * * * *

(a) *ACH Rules* means the Operating Rules and the Operating Guidelines published by Nacha, a national association of regional member clearing house associations, ACH Operators, and participating financial institutions located in the United States.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules as published in ''2021 Nacha Operating Rules & Guidelines: A Complete Guide to Rules Governing the ACH Network''and Supplement #1–2021 (both incorporated by reference, see § 210.3(b)), except:

* * * * *

(2) Section 1.14 (governing the Participating DFI Contact registry);

* * * * *

■ 3. In § 210.3, revise paragraph (b) to read as follows:

§ 210.3 Governing law.

* * * * *

(b) *Incorporation by reference.* Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Bureau of Fiscal Service must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Bureau of the Fiscal Service, 401 14th Street SW, Room 400A, Washington, DC 20227, and from the sources listed elsewhere in this paragraph. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(1) Nacha, 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171, tel. 703–561–1100, *info@nacha.org.*

(i) 2021 Nacha Operating Rules & Guidelines, with an effective date on or before March 31, 2021.

(ii) Supplement #1–2021 to the 2021 Nacha Operating Rules & Guidelines.

(2) [Reserved]

* * * * *

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2021–17268 Filed 8–18–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0637]

RIN 1625–AA00

Safety Zone; Ironman Michigan, Frankfort Harbor, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of Betsie Lake in Frankfort, MI. This action is necessary to provide for the safety of life on these navigable waters during the swim portion of an Ironman event on September 12, 2021. This proposed rulemaking would restrict usage by persons and vessels within the safety zone. At no time during the effective period may vessels transit the waters of Betsie Lake in the vicinity of a triangular shaped race course enclosed by the following three coordinates: 44°37.88′ N, 86°13.82′ W to 44°37.83′ N, 86°14.17′ W, to 44°37.54′ N, 86°13.67′ W then back to the starting point. The race course will be marked by buoys. These restrictions would apply to all vessels during the effective period unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 3, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0637 using the Federal eRulemaking Portal at *https://*

www.regulations.gov. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Chief Petty Officer Jeromy Sherrill, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414–747–7148, email *Jeromy.N.Sherrill@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On March 8, 2021, the Coast Guard was notified by the event sponsor of its intent to host Ironman Michigan in Frankfort, MI on September 12, 2021 from 5:00 a.m. to 11:00 a.m. The swim area had not yet be finalized. On July 23, 2021 the Coast Guard was notified of the finalized location of the swim portion of the event. The swim will begin near Frankfort Municipal Marina in Betsie Lake. The race course will be triangular shaped area enclosed by the following coordinates: 44°37.88′ N, 86°13.82′ W to 44°37.83′ N, 86°14.17′ W, to 44°37.54′ N, 86°13.67′ W then back to the starting point. The race course will be marked by buoys. The COTP has determined that potential hazards associated with the triathlon would be a safety concern for anyone within the safety zone that is not participating in the triathlon.

The purpose of this rulemaking is to ensure the safety of person, vessels and the navigable waters of Betsie Lake, MI. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

The Coast Guard is issuing this temporary rule with an abridged notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not undertaking a thirty-day comment period with respect to this rule because the Coast Guard received details of the finalize swim area with insufficient time remaining to undergo a full thirty-day comment period. While it is impracticable to undergo a full thirty-day comment period and still protect the public from the hazards associated with these operations, the Coast Guard invites comments for the next fifteen days.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable for the same reason stated above—immediate action is needed to respond to the potential safety hazards associated with the triathlon.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 5:00 a.m. through 11:00 a.m. on September 12, 2021. The safety zone will cover all waters of Betsie Lake in the vicinity of a triangular shaped race course near Frankfort Municipal Marina in Frankfort, MI. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the triathlon event. No vessels or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the characteristics of the safety zone. The safety zone created by this proposed rule will relatively small and is designed to minimize its impact on navigable waters. This proposed rule will prohibit entry into certain navigable waters of Betsie Lake in Frankfort, MI, and it is not anticipated to exceed 6 hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions vessels may still transit through the safety zone when permitted by the COTP.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132

(Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 2.5 hours that would prohibit entry within a relatively small portion of Sturgeon Bay. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T09–0637 to read as follows:

§ 165.T09–0637 Safety Zone; Ironman Michigan, Frankfort, MI

(a) *Location.* All waters of Betsie Lake in the vicinity of a triangular shaped race course enclosed by the following three coordinates: 44°37.88′ N, 86°13.82′ W to 44°37.83′ N, 86°14.17′ W, to 44° 37.54′ N, 86°13.67′ W then back to the starting point.

(b) *Enforcement Period.* The safety zone described in paragraph (a) would be effective on September 12, 2021 from 5:00 a.m. through 11:00 a.m.

(c) *Regulations.*

(1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) The ''designated representative'' of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Persons and vessel operators desiring to enter or operate within the safety zone during the swim portion of the triathlon must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or an on-scene representative.

Dated: August 10, 2021.

D.P. Montoro,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2021–17752 Filed 8–18–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2021–0517; FRL–8798–01–R6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Texas; Control of Emissions From Existing Other Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the CAA section 111(d)/129 state plan submitted by the State of Texas for sources subject to the Other Solid Waste Incineration Units (OSWI) Emission Guidelines (EG). The Texas OSWI plan was submitted to fulfill state obligations under CAA section 111(d)/129 to implement and enforce the requirements under the OSWI EG. The EPA is proposing to approve the state plan in part and amend the agency regulations in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before September 20, 2021.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2021–0517, at *https://www.regulations.gov* or via email to *ruan-lei.karolina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Karolina Ruan Lei, (214) 665–7346, *ruan-lei.karolina@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division—State Planning and Implementation Branch, (214) 665–7346, *ruan-lei.karolina@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under CAA section 111(b) for new sources of the same type, and the EPA has established emission guidelines for such existing sources. CAA section 129 directs the EPA to establish standards of performance for new sources (NSPS) and emissions guidelines (EG) for existing sources for each category of solid waste incinerator specified in CAA section 129. Under CAA section 129, NSPS and EG must contain numerical emissions limitations for particulate matter, opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. While NSPS are directly applicable to new sources (affected facilities), EG for existing sources (designated facilities) are intended for states to use to develop a state plan to submit to the EPA. Once approved by the EPA, the state plan becomes federally enforceable. If a state does not submit an approvable state plan to the EPA, the EPA is responsible for developing, implementing, and enforcing a federal plan.

The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans for controlling designated pollutants from designated facilities. Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which the EPA will approve or disapprove such plans submitted by a state. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant(s).

EPA promulgated the OSWI NSPS and EG on December 16, 2005, codified at 40 CFR part 60, subparts EEEE and FFFF, respectively (70 FR 74870, as amended at 71 FR 67806, November 24, 2006). Thus, states were required to submit plans for incinerators subject to the OSWI EG pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B. OSWI means very small municipal waste combustion unit or an institutional waste incineration unit (IWI) as defined under 40 CFR 60.3078. The designated facilities to which the current OSWI EG apply are OSWI and certain air curtain incinerators (ACI) [1] that commenced construction on or before December 9, 2004, and were not modified or reconstructed on or after June 16, 2006, as specified in 40 CFR 60.2991 and 60.2992, with limited exceptions as provided under 40 CFR 60.2993. The EPA proposed revisions to the OSWI EG and NSPS on August 31, 2020 (85 FR 54178). When the EPA finalizes the revisions to the OSWI EG,[2] each state (and air quality control jurisdiction) will need to submit a negative declaration or plan, as applicable, for those sources subject to the requirements of the final revised OSWI EG.

In order to fulfill obligations under CAA sections 111(d) and 129, the Texas Commission on Environmental Quality (TCEQ) submitted a state plan for the control of emissions from sources subject to the OSWI EG for the State of Texas on May 18, 2009.[3] The Texas OSWI plan implements and enforces the applicable provisions under the OSWI EG at 40 CFR part 60, subpart FFFF, and additionally meets the relevant requirements of the CAA section 111(d)

[1] These ACI subject to the OSWI EG at 40 CFR part 60, subpart FFFF are those ACI that do not fit the definition of an ''OSWI'' as they burn certain types of wastes. See 40 CFR 60.2994(b) and 40 CFR 60.3078.

[2] The court ordered deadline to promulgate the final OSWI review is May 31, 2021. *Sierra Club* v. *Wheeler,* 330 F. Supp. 3d 407. (D.D.C. 2018).

[3] The Texas OSWI plan submitted by TCEQ does not cover sources located in Indian country.

implementing regulations at 40 CFR part 60, subpart B. It was subsequently discovered that 30 TAC § 113.2313(3)(B) is inconsistent with the delegation of authority provisions of Title 40 CFR 60.2990(6) and 60.3020(c)(2). As discussed in more detail in the next section, on June 11, 2021, TCEQ submitted a commitment letter to the EPA to address a discrepancy in the Texas OSWI plan. A copy of the Texas submittal and the commitment letter is included in the docket for this rulemaking (Docket No. EPA–R06–OAR–2021–0517).[4]

II. Evaluation

The EPA has evaluated the Texas OSWI plan to determine whether the plan meets applicable requirements from the OSWI EG at 40 CFR part 60, subpart FFFF, and the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B. The EPA's detailed rationale and discussion on the Texas OSWI plan can be found in the Technical Support Document (TSD), located in the docket for this rulemaking.

Section 60.2983 of the OSWI EG addresses what must be included in state plan submittals. These requirements include:

(1) Inventory of affected incineration units, including those that have ceased operation but have not been dismantled.

(2) Inventory of emissions from affected incineration units in the State.

(3) Compliance schedules for each affected incineration unit.

(4) For each affected incineration unit, emission limitations, operator training and qualification requirements, a waste management plan, and operating parameter requirements that are at least as protective as the emission guidelines contained in this subpart.

(5) Stack testing, recordkeeping, and reporting requirements.

(6) Transcript of the public hearing on the State plan.

(7) Provision for State progress reports to EPA.

(8) Identification of enforceable State mechanisms that the State selected for implementing the emission guidelines of this subpart.

(9) Demonstration of the state's legal authority to carry out the sections 111(d) and 129 in the state plan.

Section 60.2983 of the OSWI EG also requires the state plan to demonstrate that it is at least as protective as the OSWI EG if it deviates from the format and content of the EG in 40 CFR part 60, subpart FFFF. The state plan must also follow the requirements of 40 CFR part 60, subpart B. The TSD goes into detail as to how the Texas OSWI plan meets these requirements. In evaluating the state's OSWI plan, the EPA considered the commitment letter submitted by the State. The letter addressed the component of the state plan that is inconsistent with the withheld authority provisions of the OSWI EG, specifically, the review of qualified operator accessibility status reports under 30 TAC § 113.2313(3)(B), which corresponds to 40 CFR 60.3020(c)(2). In order to address the discrepancy, the TCEQ committed to forward any notification, report, or request it receives pursuant to 30 TAC § 113.2313(3) to the EPA without taking any other action, including approving or disapproving any request.

III. Proposed Action

The EPA is proposing to partially approve the Texas OSWI plan submitted by TCEQ and amend 40 CFR part 62 in accordance with the requirements under sections 111(d) and 129 of the CAA. The EPA is proposing to find that the Texas OSWI plan, with the exception of 30 TAC § 113.2313(3), is at least as protective as the Federal requirements provided under the OSWI EG, codified at 40 CFR part 60, subpart FFFF. Once approved by the EPA, the Texas OSWI plan will become federally enforceable.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and FFFF; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d)/129 state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 13, 2021.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2021–17763 Filed 8–18–21; 8:45 am]

BILLING CODE 6560–50–P

[4] The May 18, 2009, Texas submittal also includes the CAA section 111(d)/129 plans addressing requirements for incinerators subject to the Small Municipal Waste Combustion units (SMWC) Emission Guidelines at 40 CFR part 60, subpart BBBB, and the Commercial and Industrial Solid Waste Incineration units (CISWI) Emission Guidelines at 40 CFR part 60, subpart DDDD. We are only addressing the Texas OSWI plan portion in this rulemaking.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 21–232, EA Docket No. 21–233; FCC 21–73; FR ID 39556]

Protecting Against National Security Threats to the Communications Supply Chain Through the Equipment Authorization Program and the Competitive Bidding Program

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: The Commission seeks comment on how to leverage its equipment authorization program to encourage manufacturers who are building devices that will connect to U.S. networks to consider cybersecurity standards and guidelines.

DATES: Comments are due on or before September 20, 2021; reply comments are due on or before October 18, 2021.

ADDRESSES: You may submit comments, identified by ET Docket No. 21–232, by any of the following methods:

- *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary Office of the Secretary, Federal Communications Commission.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jamie Coleman Office of Engineering and Technology, 202–418–2705, *Jamie.Coleman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry (NOI), that is part of ET Docket No. 21–232, EA Docket No. 21–233, FCC 21–73, that was adopted and released June 17, 2021. The full text of this document is available by downloading the text from the Commission's website at: *https://www.fcc.gov/document/equipment-authorization-and-competitive-bidding-supply-chain-nprm.* When the FCC Headquarters reopens to the public, the full text of this document will also be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Ex Parte Rules—Permit-But-Disclose

The proceeding this NOI initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

The Commission adopted this Notice of Inquiry (NOI) in conjunction with a Notice of Proposed Rulemaking, ET Docket No. 21–232, EA Docket No. 21–233, FCC 21–73, in which it proposes direct action to limit the presence of untrusted equipment and services in U.S. networks. The Commission believes that ensuring continued U.S. leadership requires that the Commission

also explore opportunities to spur trustworthy innovation for more secure equipment. In this NOI, the Commission seeks comment on how the Commission can leverage its equipment authorization program to encourage manufacturers who are building devices that will connect to U.S. networks to consider cybersecurity standards and guidelines.

The development and implementation of effective cybersecurity practices requires the continued cooperation and participation of all stakeholders. In this regard, the Commission observes that both the public and private sectors have come together to develop measures to protect the integrity of communications networks and guard against malicious or foreign intrusions that can compromise network services, steal proprietary information, and harm consumers. In particular, the National Institute of Standards and Technology (NIST) has worked with both industry and government to produce multiple cybersecurity frameworks and other forms of guidance that help protect the integrity of communications networks. Pursuant to Executive Order No. 13636, NIST began working with public and private stakeholders to develop a voluntary cybersecurity framework designed to reduce risks to critical infrastructure. Exec. Order No. 13636, 78 FR 11737 (Feb. 19, 2013; *see* Nat'l Inst. of Standards & Tech., *Cybersecurity Framework: New to Framework* (last updated Sept. 23, 2020), *https://www.nist.gov/cyberframework/new-framework.* This framework consists of ''voluntary guidance, based on existing standards, guidelines, and practices for organizations to better manage and reduce cybersecurity risk.'' *See* Nat'l Inst. of Standards & Tech., *Cybersecurity Framework: New to Framework* (last updated Sept. 23, 2020), *https://www.nist.gov/cyberframework/new-framework.* Originally issued in 2013, the NIST cybersecurity framework was updated in 2018 to clarify and refine certain aspects and better explain how entities should use the framework to improve their cybersecurity practices. *See* Nat'l Inst. of Standards & Tech., *Framework for Improving Critical Infrastructure Cybersecurity: Version 1.1* (Apr. 16, 2018), *https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf.* In addition, among other organizations, the Federal Trade Commission has been active in cybersecurity matters for years, bringing multiple enforcement actions against firms for having poor cybersecurity practices and offering cybersecurity guidance for Internet of Things (IoT) devices as early as 2015. Fed. Trade Comm'n, *Careful Connections: Building Security in the Internet of Things* (Jan. 2015), *https://www.bulkorder.ftc.gov/system/files/publications/pdf0199-carefulconnections-buildingsecurity internetofthings.pdf.* Further, industry trade groups, including CTIA–The Wireless Association, GSMA, the ioXt Alliance, and TIA have produced cybersecurity guidance applicable to various sectors of the communications industry. Non-profit standards bodies and think tanks have also produced cybersecurity guidance that could be useful to the communications industry. *See, e.g.,* internet Soc'y, *Internet of Things (IoT) Trust Framework v2.5* (May 22, 2019), *https://www.internetsociety.org/resources/doc/2018/iot-trust-framework-v2-5/.*

More recently, NIST has developed a Cybersecurity for IoT Program, which specifically ''supports the development and application of standards, guidelines, and related tools to improve the cybersecurity of connected devices and the environments in which they are deployed.'' Nat'l Inst. of Standards & Tech., *NIST Cybersecurity for IoT Program* (last updated Mar. 19, 2021), *https://www.nist.gov/programs-projects/nist-cybersecurity-iot-program.* Devices that operate as part of the IoT specifically raise concerns about security risks. For example, NTIA has recognized that connected devices in the IoT can extend the scope and scale of automated, distributed attacks.

This Cybersecurity for IoT program has produced multiple reports, but perhaps most notable is Internal Report 8259, released in May 2020. Nat'l Inst. of Standards & Tech., *Foundational Cybersecurity Activities for IoT Device Manufacturers,* Internal Report 8259 (May 2020) (*NIST IoT Report*), *https://nvlpubs.nist.gov/nistpubs/ir/2020/NIST.IR.8259.pdf.* This *NIST IoT Report* details activities that ''can help manufacturers lessen the cybersecurity-related efforts needed by customers, which in turn can reduce the prevalence and severity of IoT device compromises and the attacks performed using compromised devices.'' *Id.* The NIST IoT Report is voluntary guidance intended to help promote the best available practices for mitigating risks to IoT security. The report describes six recommended foundational cybersecurity activities that manufacturers should consider performing to improve the securability of the new IoT devices they make. They include identifying expected customers and users and defining expected use cases; researching customer cybersecurity needs and goals; determining how to address customer needs and goals; planning for adequate support of customer needs and goals; defining approaches for communicating to customers; and deciding what to communicate to customers and how to communicate it. These activities are intended to fit within a manufacturer's existing development process.

The Commission seeks comment on how it can leverage its equipment authorization program to help address the particular security risks that are associated with IoT devices. Should the Commission encourage manufacturers of IoT devices to follow the guidance in the *NIST IoT Report*? If the Commission were to utilize the equipment authorization process to incentivize better cybersecurity practices, either for all devices or specifically for IoT devices, what form should such provisions take and how would such a program be structured most effectively? Should the FCC allow IoT manufacturers to voluntarily certify during the equipment authorization process that they have performed or plan to perform the activities described in the guidance? Are there other technologies or cybersecurity methods that mitigate security risks (*e.g.,* RF fingerprinting or some other method)? What, if anything, should the Commission be doing to encourage development and adoption of such technologies or methods? Which standards should be considered? Are there other incentives or considerations that could encourage manufacturers to build security into their products? Commenters should discuss the potential costs and benefits associated with their proposals or with the potential approaches discussed herein.

Even with broad adoption of industry best practices and standards, some equipment sold in the United States may lack appropriate security protections. What is the role of retailers in voluntarily limiting the sale of such equipment? How can retailers educate consumers about the importance of security protections for their devices? The Commission also seeks to understand developments in international standards-setting bodies. What is the status of international standards-setting that could be relevant to supply chain security, and what can the FCC do to encourage action by international standards-setting bodies and participation by American companies in their efforts?

The Commission observes that the Consumer Technology Association (CTA) published a white paper offering guidance for how government, industry, and consumers can all work together to

promote better cybersecurity practices going forward. Consumer Tech. Ass'n, *Smart Policy to Secure our Smart Future: How to Promote a Secure Internet of Things for Consumers* (Mar. 2021) (*CTA Cybersecurity White Paper*), *https://www.cta.tech/Resources/Newsroom/Media-Releases/2021/March/IOT-Device-Security-White-Paper-Release*. In this white paper, CTA encourages public-private partnerships to develop and deploy risk-based approaches to cybersecurity, and argues that ''neither the new Administration nor Congress should embrace rules, product labels or certification regimes for consumer IoT.'' They claim that ''[c]ybersecurity mandates, pre-market 'approval,' and government certification or labeling of IoT devices are likely to require an enormous bureaucracy and have unintended consequences.'' The Commission seeks comment on these views. Are there any gaps in the *NIST IoT Report* or other federal efforts to address IoT security that the Commission could help address?

The Commission recognizes that consideration of how to incentivize cybersecurity best practices through the equipment authorization process aligns closely with the recently issued Executive Order 14028, which directs NIST to work with the Federal Trade Commission and other agencies to develop a labeling program to identify specific IoT cybersecurity criteria and provide that information to consumers. Exec. Order No. 14028, *Executive Order on Improving the Nation's Cybersecurity,* 86 FR 26633, 26640–41, § 4(s)–(u) (May 17, 2021). While the Director of NIST has not yet identified the agencies that will participate in the forthcoming IoT cybersecurity labeling program, the Commission seeks comment on whether the Commission can support these efforts, either directly or indirectly. If so, how?

Legal Authority

Adopting rules that take security into consideration in the equipment authorization process would serve the public interest by addressing significant national security risks that have been identified by this Commission in other proceedings, and by Congress and other federal agencies, and doing so would be consistent with the Commission's statutory ''purpose of regulating interstate and foreign commerce in communication by wire and radio . . . for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communications.'' 47 U.S.C. 151. The Commission tentatively concludes that doing so is not specifically authorized by the Secure Networks Act itself, pursuant to which the Commission adopted the Covered List. However, the Commission has broad authority to adopt rules, not inconsistent with the Communications Act, ''as may be necessary in the execution of its functions.'' 47 U.S.C. 154(i). The Commission believes that, in order to ensure that the Commission's rules under the Secure Networks Act effectively preclude use of equipment on the Covered List by USF recipients as contemplated by Congress, it is necessary to rely on the Commission's established equipment authorization procedures to restrict further equipment authorization, and the importation and marketing, of such devices in the first instance. As discussed above, the Commission also relies on the equipment authorization process to implement other statutory duties, including the duty to promote efficient use of the radio spectrum, the duties under the National Environmental Policy Act to regulate human RF exposure, the Commission's duty to ensure that mobile handsets are compatible with hearing aids, and the duty to deny federal benefits to certain individuals who have been convicted multiple times of federal offenses related to trafficking in or possession of controlled substances. The Commission believes that these processes can and should also serve the purpose of fulfilling other Commission responsibilities under the Secure Networks Act, and the Commission seeks comment on that issue.

The Commission also believes that other authorities in the Communications Act of 1934, as amended, provide authority for the Commission to rely on for potential modifications to its rules and procedures governing equipment authorization. Since Congress added section 302 to the Act, the Commission's part 2 equipment authorization rules and processes have served to ensure that RF equipment marketed, sold, imported, and used in the United States complies with the applicable rules governing use of such equipment. *See Equipment Authorization of RF Devices,* Docket No. 19356, Report and Order, 39 FR 5912, 5912, para. 2 (1970). That section authorizes the Commission to, ''consistent with the public interest, convenience, and necessity, make reasonable regulations . . . governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications.'' 47 U.S.C. 302(a)(1). Regulations that the Commission adopts in implementing that authority ''shall be applicable to the manufacture, import, sale, offer for sale, or shipment of such devices and . . . to the use of such devices.'' 47 U.S.C. 302(a)(2). The authorization processes are primarily for the purpose of evaluating equipment's compliance with technical specifications intended to minimize the interference potential of devices that emit RF energy. As noted above, however, these rules are also designed to implement other statutory responsibilities. The Commission seeks comment on the scope of the authority to rely on such rules to effectuate other public interest responsibilities, including the Commission's section 303(e) authority to ''[r]egulate the kind of apparatus to be used with respect to its external effects.'' 47 U.S.C. 303(e).

Section 302(a) directs the Commission to make reasonable regulations consistent with the public interest governing the interference potential of devices; it would appear to be in the public interest not to approve devices capable of emitting RF energy in sufficient degree to cause harmful interference to radio communications if such equipment has been deemed, pursuant to law, to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. The Commission seeks comment on this tentative conclusion.

The Commission also seeks comment on a potential alternative basis for such security rules. The Communications Assistance for Law Enforcement Act (CALEA) includes security requirements that apply directly to equipment intended for use by providers of telecommunications services. 47 U.S.C. 1001–1010. Section 105 requires telecommunications carriers to ensure that the surveillance capabilities built into their networks ''can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of the carrier acting in accordance with regulations prescribed by the Commission,'' (47 U.S.C. 1004) and the Commission has concluded that its rule prohibiting the use of equipment produced or provided by any company posing a national security threat implements that provision. *Supply Chain First Report and Order,* 34 FCC Rcd at 11436–37, paras. 35–36. The Commission is required to prescribe rules necessary to implement CALEA's requirements. 47 U.S.C. 229.

As noted above, the Commission believes it has ancillary authority under section 4(i) of the Act to consider revisions to its part 2 rules as reasonably necessary to the effective enforcement of the Secure Networks Act. The Commission also tentatively concludes that such rules would be consistent with the Commission's specific statutorily mandated responsibilities under the Communications Act to make reasonable regulations consistent with the public interest governing the interference potential of electronic devices, to protect consumers through the oversight of common carriers under Title II of that Act, and to prescribe the nature of services to be rendered by radio licensees under section 303(b) of that Act. The Commission seeks comment on this reasoning as well. The Commission also seeks comment on any other sources of authority for the Commission to propose rules as a result of this Notice of Inquiry.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021–16087 Filed 8–18–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 21–232, EA Docket No. 21–233; FCC 21–73; FR ID 39522]

Protecting Against National Security Threats to the Communications Supply Chain Through the Equipment Authorization Program and the Competitive Bidding Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to revise rules related to its equipment authorization processes to prohibit authorization of any ''covered'' equipment on the recently established Covered List. The Commission also seeks comment on whether to require additional certification relating to national security from applicants who wish to participate in the Commission's competitive bidding auctions. This action explores steps the Commission can take to further its goal of protecting communications networks from communications equipment and services that pose a national security risk.

DATES: Comments are due September 20, 2021. Reply comments are due October 18, 2021. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before October 18, 2021.

ADDRESSES: You may submit comments, identified by ET Docket No. 21–232, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Jamie Coleman, Office of Engineering and Technology, 202–418–2705, *Jamie.Coleman@fcc.gov.* For information regarding the PRA information collection requirements contained in this PRA, contact Nicole Ongele, Office of Managing Director, at (202) 418–2991 or *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), in ET Docket No. 21–232 and EA Docket No. 21–233; FCC 21–73, adopted and released June 17, 2021. The full text of this document is available by downloading the text from the Commission's website at: *https://www.fcc.gov/document/equipment-authorization-and-competitive-bidding-supply-chain-nprm.* When the FCC Headquarters reopens to the public, the full text of this document will also be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554.

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due October 18, 2021.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0057.

Title: Application for Equipment Authorization, FCC Form 731.

Form No.: FCC Form 731.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 11,305 respondents; 24,873 responses.

Estimated Time per Response: 8.11 hours (rounded).

Frequency of Response: On occasion and one-time reporting requirements; third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the 47 U.S.C. 154(i), 301, 302, 303, 309(j), 312, and 316, and 47 CFR 1.411.

Total Annual Burden: 206,863 hours.

Total Annual Costs: $50,155,140.

Privacy Act Impact Assessment: Yes. The personally identifiable information (PII) in this information collection is covered by a Privacy Impact Assessment (PIA), Equipment Authorizations Records and Files Information System. It is posted at: *https://www.fcc.gov/general/privacy-act-information#pia.*

Nature and Extent of Confidentiality: Minimal exemption from the Freedom of Information Act (FOIA) under 5 U.S.C. 552(b)(4) and FCC rules under 47 CFR 0.457(d) is granted for trade secrets which may be submitted as attachments to the application FCC Form 731. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this 60-day comment period to obtain the three-year clearance. The Commission is reporting program changes, increases to this information collection.

On June 17, 2021, the Commission adopted a Notice of Proposed Rulemaking and Notice of Inquiry in ET Docket. No. 21–232 and EA Docket No. 21–233, FCC 21–73, ''*Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program.*'' Among other proposed rules intended to secure our nation's telecommunications networks, the Commission proposes to amend the 47 CFR part 2 rules related to equipment authorization to prohibit the authorization of communications equipment if the Commission determines that such equipment or service poses an unacceptable risk to the national security of the United States or the security and safety of United States persons. Accordingly, the Commission proposes to add § 2.911 to its rules, 47 CFR 2.911. The statutory authority for this collection of information is authorized under sections 4(i), 301, 302, 303, 309(j), 312, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303, 309(j), 312, and 316.

Ex Parte Rules—Permit-But-Disclose

The proceeding this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

I. Introduction

In this Notice of Proposed Rulemaking (NPRM), the Commission proposes revisions to its equipment authorization rules and processes to prohibit authorization of any communications equipment on the list of equipment and services (Covered List) that the Commission maintains pursuant to the Secure and Trusted Communications Networks Act of 2019. Secure and Trusted Communications Networks Act of 2019, Public Law 116–124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. 1601–1609) (*Secure Networks Act*). This prohibition would apply to ''covered'' equipment on the Covered List maintained and updated by the Commission's Public Safety and Homeland Security Bureau (PSHSB) at *https://www.fcc.gov/supplychain/coveredlist.* The Commission also seeks comment on whether the rules concerning equipment currently exempted from the equipment authorization requirement should be revised to ensure that any ''covered'' equipment cannot qualify for such exemption. In addition, the Commission seeks comment on whether to revoke any of the authorizations that have been previously granted for ''covered'' equipment on the Covered List, and if so, which ones and through what procedures. Finally, the Commission seeks comment on new certifications for applicants that wish to participate in Commission auctions that would further address the risks posed by companies that the Commission has designated as posing a national security threat to the integrity of communications networks and the communications supply chain.

II. Background

The Covered List. On March 21, 2021, PSHSB published the Covered List identifying the covered equipment and services that specific, enumerated sources have deemed to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. ''Public Safety and Homeland Security Bureau Announces Publication of the List of Equipment and Services Covered by Section 2 of the Secure Networks Act,'' WC Docket No. 18–89, Public Notice, DA 21–309 (PSHSB, Mar. 12, 2021) (*Covered List Public Notice*); *see* 47 CFR 1.50002. Pursuant to 47 CFR 1.50002, this Covered List identified certain telecommunications equipment and services produced or provided by Huawei Technologies Company and ZTE Corporation, and video surveillance and telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company—and their respective subsidiaries and/or affiliates. The Commission tasked PSHSB with ongoing responsibilities for monitoring the status of the determinations and periodically updating the Covered List to address changes as appropriate.

The equipment authorization program. The Commission's current rules provide two different approval procedures for equipment authorization—Certification of equipment and Supplier's Declaration of Conformity (SDoC). As a general matter, for a radiofrequency device (RF device)

to be marketed or operated in the United States, it must have been authorized for use through one of these two processes. Some RF equipment has been exempted from the need for an equipment authorization. At this time, the Commission's current equipment authorization rules do not include specific provisions addressing the ''covered'' equipment on the Covered List.

Competitive bidding certifications. The Commission uses competitive bidding to determine which among multiple applicants with mutually exclusive applications for a license may file a full application for the license. Congress gave the Commission the authority to require such information and assurances from applicants to participate in competitive bidding as is necessary to demonstrate that their application is acceptable. Pursuant to this authority, the Commission has required each applicant to participate in competitive bidding to make various certifications.

III. Discussion

In this NPRM, the Commission examines its rules relating to equipment authorization and participation in Commission auctions to help advance the Commission's goal of protecting national security and public safety. This proceeding builds on other actions the Commission recently has taken to protect and secure our nation's communications systems.

In other proceedings over the last three years, the Commission has taken several actions to prevent use of equipment and services that pose an unacceptable risk to our nation's communications networks. In June 2020, the Public Safety and Homeland Security Bureau (PSHSB) designated Huawei and ZTE as national security threats to the integrity of communications networks, prohibiting the use of Universal Service Fund (USF) support to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by Huawei and ZTE. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—Huawei Designation,* PS Docket No. 19–351, Order, 35 FCC Rcd 6604 (PSHSB 2020) (*Huawei Designation Order*); *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—ZTE Designation,* PS Docket No. 19–352, Order, 35 FCC Rcd 6633 (PSHSB 2020) (*ZTE Designation Order*). Most recently, PSHSB, as required by the December 2020 Supply Chain Second Report and Order (*Supply Chain Second Report and Order,* 35 FCC Rcd 14284), published the Covered List, which identifies ''covered'' equipment and services that pose an unacceptable risk to national security or to the security and safety of U.S. persons. *Covered List Public Notice; see* 47 CFR 1.50002. PSHSB will continue to update that list as appropriate. Although the Commission, through PSHSB, publishes and updates the Covered List, the equipment and services included on the list are identified by specific external sources enumerated in the Secure Networks Act. 47 CFR 1.50002(b)(1)(i)–(iv).

This Covered List identifies communications equipment and services that pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. The Commission is required to include communications equipment and services on the list based exclusively on determinations made by Congress and by other U.S. government agencies. 47 U.S.C. 1601(c). Currently, the list includes equipment and services produced or provided by five entities: ''Telecommunications equipment produced or provided by'' Huawei Technologies Company or ZTE Corporation, or their respective subsidiaries and affiliates, ''including telecommunications or video surveillance services produced or provided by such [entities] or using such equipment;'' and ''Video surveillance and telecommunications equipment produced or provided by'' Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, or their respective subsidiaries and affiliates, ''to the extent it is used for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, including telecommunications or video surveillance services produced or provided by such [entities] or using such equipment.'' *Covered List Public Notice* at 3. (As noted in this Public Notice, where equipment or services on the list are identified by category, such category should be construed to include only equipment or services capable of the functions outlined in sections 2(b)(2)(A), (B), or (C) of the Secure Networks Act. 47 U.S.C. 1601(b)(2)(A)–(C)). Under the Secure Networks Act and the Commission's new rule, part 1, subpart DD, inclusion of equipment and services on the Covered List precludes the use of federal subsidy funds—*e.g.,* funds from the Commission's Universal Service Programs—to obtain or maintain such equipment or services. 47 U.S.C. 1602; 47 CFR 1.50000 *et seq.; see Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 35 FCC Rcd 7821, 7825–28, paras. 16–22 (2020).

This NPRM seeks comment on various steps that the Commission could take in its equipment authorization program, as well as its competitive bidding program, to reduce threats posed to our nation's communications system. The Commission proposes revisions to its equipment authorization rules and procedures under part 2 to prohibit authorization of any ''covered'' equipment on the Covered List. It also seeks comment on whether to revise the rules on equipment currently exempted from the equipment authorization requirements to no longer permit this exemption for such ''covered'' equipment. In addition, it seeks comment on whether the Commission should revoke equipment authorizations of ''covered'' equipment, and if so under what conditions and procedures. Finally, we include questions concerning possible revisions to the Commission's competitive bidding procedures that could address certain concerns related to ''covered'' equipment and services. Notably, the Commission must ''periodically update the list . . . to address changes in [external] determinations . . . [and] shall monitor the making and reversing of determinations . . . in order to place additional communications equipment or services on the list . . . or to remove communications equipment and services from such list.'' Secure Networks Act § 2(d)(1)–(2); *see also* 47 CFR 1.50003. If one of the enumerated sources named in the Secure Networks Act modifies or deletes a determination, PSHSB will do the same and modify the Covered List accordingly. *See* 47 CFR 1.50003(b) (if a determination regarding covered communications equipment or service on the Covered List is reversed or modified, directing PSHSB to remove from or modify the entry of such equipment or service on the Covered List, except if any of the sources identified in 47 CFR 1.50002(b)(1)(i)–(iv) maintains a determination supporting inclusion of such equipment or service on the Covered List). The Commission seeks comment on how future updates to the Covered List should affect our proposals in this Notice.

A. Equipment Authorization Rules and Procedures

In this Notice, the Commission proposes revisions to the Commission's equipment authorization rules and processes to prohibit authorization of any ''covered'' equipment on the Covered List. This prohibition would apply to ''covered'' equipment on the Covered List maintained and updated by PSHSB. The Commission also seeks comment on whether its rules concerning equipment currently exempted from the equipment authorization requirement should be revised to ensure that any ''covered'' equipment cannot qualify for such exemption. In addition, it seeks comment on whether it should revoke any of the authorizations that have been previously granted for ''covered'' equipment on the Covered List, and if so, which ones and through what procedures. Finally, it seeks comment on new certifications for applicants that wish to participate in Commission auctions that would further address the risks posed by companies that the Commission has designated as posing a national security threat to the integrity of communications networks and the communications supply chain.

1. Equipment Authorization Rules Under Part 2

a. General Provisions of Subpart J

The Commission's equipment authorization rules and procedures, set forth in 47 CFR part 2, include requirements and processes for equipment marketing, authorization, and importation. The Commission proposes to adopt a new provision, 47 CFR 2.903, as part of the ''General Provisions'' of subpart J, to provide general guidance regarding the prohibition on equipment authorizations with respect to communications equipment on the Covered List. In proposing this new rule section, the Commission seeks to establish a clear prohibition on authorization of any ''covered'' equipment in the Commission's equipment authorization processes regardless of the process to which that equipment is subject. The Commission seeks comment on this proposed rule. Is this rule sufficient to prohibit any such equipment on the Covered List from being authorized for use in the United States? What modifications or clarifications are needed to this proposed language to ensure that the rule is clear as to its scope and effect and attains results commensurate with its purpose to protect national security? Are there additional provisions that should be included here to more fully capture the scope of the Commission's proposed prohibition?

If the Commission were to adopt this proposal to revise the Commission's subpart J equipment authorization rules to prohibit any further authorization of ''covered'' equipment through the certification or SDoC processes, this decision would also serve to prohibit the marketing of such equipment that would now be prohibited from authorization under subpart I of the Commission's part 2 rules (Marketing of Radio-Frequency Devices) and importation of equipment under subpart K (Importation of Devices Capable of Causing Harmful Interference) of the Commission's part 2 rules. Section 2.803(b) of subpart I only permits persons to import or market RF devices that are subject to authorization under either the certification or SDoC process, as set forth in the Commission's subpart J rules, once those devices have been authorized, unless an exception applies. Similarly, the Commission's proposed revisions in subpart J also would serve to prohibit importing or marketing of ''covered'' equipment if it is subject to authorization through either the certification or SDoC process in subpart J and has not been authorized, per sections 2.1201(a) and 2.1204(a). The Commission seeks comment on the need to revise or provide clarification with regard to how the Commission's proposed prohibition of authorization of ''covered'' equipment affects the implementation of the Commission's rules in either subpart I or subpart K. Would the general prohibition the Commission proposes for equipment subject to certification and SDoC make any changes to subparts I or K unnecessary? If not, what changes are needed to the Commission rules in those subparts?

The Commission seeks comment on other revisions that it should make regarding equipment authorization either through the certification or SDoC rules and procedures. The Commission discusses and seeks comment on how the proposed rule should be implemented with respect to each of these processes, and whether other rule revisions or clarifications are appropriate. While the vast majority of RF devices are subject to either certification or an SDoC under the rules in subpart J, there is a limited category of devices that are exempt from these authorization processes. The Commission also seeks comment on how best to address this equipment.

b. Certification Rules

Background. As described in brief above, under the Commission's equipment authorization rules, certain radiofrequency devices that have the greatest potential to cause harmful interference to radio services, must be processed through the equipment certification procedures. Certification generally is required for equipment that consists of radio transmitters as well as some unintentional radiators. Examples of equipment that requires certification include mobile phones, wireless provider base stations, point-to-point and point-to-multipoint microwave stations, land mobile, maritime and aviation radios, remote control transmitters, wireless medical telemetry transmitters, Wi-Fi access points and routers, home cable set-top boxes with Wi-Fi, and most wireless consumer equipment (*e.g.,* tablets, smartwatches and smart home automation devices). Applicants are required to file with an FCC-recognized Telecommunication Certification Body (TCB) applications containing specified information. *See* 47 CFR 2.907 (Certification), 2.911–926 (Applications), 2.960–964 (Telecommunication Certification Bodies), 2.1031–1060 (Certification). Each applicant is required to provide the TCB with all pertinent information as required by the Commission's rules. *See, e.g.,* 47 CFR 2.911(d), 2.1033(a). These requirements generally specify the information necessary to document compliance with the testing requirements that broadly apply to RF devices used under authority of the Commission, including devices used under licensed radio services and devices used on an unlicensed basis. Additional application information is required to demonstrate compliance with specific technical requirements in particular service rules (*e.g.,* that antennas on certain unlicensed part 15 devices are not detachable (47 CFR 15.203) or that certain part 90 private land mobile transmitters meet required efficiency standards (47 CFR 90.203(j))) or other broadly applicable policy-related Commission requirements (*e.g.,* compliance with the Anti-Drug Abuse Act (47 CFR 1.2002; 2.911(d)(2))). By signing the application for equipment authorization (FCC Form 731), each applicant attests that the information provided in all statements and exhibits pertaining to that particular equipment are true and correct. The TCB then makes a determination as to whether to grant an equipment certification based on evaluation of the submitted documentation and test data. The Commission, through OET, oversees the

certification application process, and provides guidance to applicants, TCBs, and test labs through its pre-approval guidance (including its knowledge database system (KDB)) with regard to required testing and other information associated with certification approval procedures and processes. Applications that involve new technology or for which there are no FCC-recognized test procedures require a TCB to obtain pre-approval guidance from the Commission before the application may be approved. 47 CFR 2.964. Once a TCB makes a determination, either on its own or after consultation with the Commission, to grant an equipment certification, information about that authorization is publicly announced ''in a timely manner'' through posting on the Commission-maintained Equipment Authorization System (EAS) database, and referenced via unique FCC identifier (FCC ID). Once this original certification is granted, the device is subject to rules that specify requirements: for modifying equipment, marketing under or changing FCC ID, and transferring ownership of an FCC ID.

The Commission's part 2 rules also include various provisions that help ensure that equipment certifications comply with Commission requirements. The Commission is authorized to dismiss or deny an application where that application is not in accordance with Commission requirements or the Commission is unable to make a finding that grant of the application would serve the public interest. The rules also provide that the TCB or Commission may set aside a certification within 30 days of grant if it determines that the equipment does not comply with necessary requirements. The rules also require the TCB to perform ''post market surveillance'' of equipment that has been certified, with guidance from OET, as may be appropriate. Revocation of an existing equipment authorization is also authorized for various reasons, including for false statements and representations in the application. And an authorization may be withdrawn if the Commission changes its technical standards.

Discussion. The Commission proposes certain additional revisions to the Commission's rules and processes regarding equipment certification. In proposing to revise the Commission equipment certification rules, the Commission goal is to design a process that efficiently and effectively prohibits authorization of ''covered'' equipment without delaying the authorization of innovative new equipment that benefits lives.

The Commission proposes revising the equipment certification application procedures to include a new provision in section 2.911 that would require applicants to provide a written and signed attestation that, as of the date of the filing of the application, the equipment for which the applicant seeks certification is not ''covered'' equipment on the Covered List. Specifically, any applicant for certification would attest that no equipment (including component part) is comprised of any ''covered'' equipment, as identified on the current published list of ''covered'' equipment. This new provision also would cross-reference section 1.50002 of the Commission's rules that pertain to the Covered List. The Commission seeks comment on this proposal. The Commission also invites comment on particular language that should be included in this attestation. For instance, to what extent should the Commission consider basing this attestation language on the certifications that providers of advanced communications services must complete to receive a Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services? Are there additional compliance measures beyond the attestation that the Commission should consider? Should the applicant have an ongoing duty during the pendency of the application to monitor the list of covered equipment and provide notice to the TCB or the Commission if, subsequent to the initial filing of the application or at the time a grant of certification, the equipment or a component part had become newly listed as ''covered'' equipment in an updated Covered List?

Section 2.1033 discusses information that must be included in the application. The Commission seeks comment on whether there are revisions that the Commission should adopt in this rule provision that would further clarify the Commission proposals regarding prohibition of the certification of any ''covered'' equipment. What information may be pertinent to assist the TCBs and the Commission in ensuring that applications do not seek certification of ''covered'' equipment? Should the Commission require that the applicant provide certain information that would help establish that the equipment is not ''covered'' equipment to assist TCBs and the Commission in making determinations about whether to grant the application? For example, the Commission currently requires applicants to file block diagrams or schematic diagrams of their devices. 47 CFR 1.50002 (Covered List). Should the Commission also require a parts list noting the manufacturer of each part? If the Commission were to adopt such a requirement, should it apply to all or only certain components? Which ones? How much additional burden, if any, would this place on applicants as compared to the current level of effort needed to prepare an equipment certification application?

The Commission proposes to direct the Office of Engineering and Technology (OET) to develop guidance for use by interested parties, including applicants and TCBs, regarding the Commission's proposed prohibition on certification of ''covered'' equipment. In particular, the Commission proposes to direct PSHSB, the Wireline Competition Bureau (WCB), the Wireless Telecommunications Bureau, the International Bureau, and the Enforcement Bureau to assist OET in developing pre-approval guidance that provides the necessary guidance that TCBs can use and should follow in implementing the proposed prohibition. PSHSB, which is tasked with publication of the Covered List, and has significant responsibilities and expertise regarding ensuring that the nation's public safety communications networks are secure, can lend important assistance by collaborating with OET to provide such guidance. The Commission seeks comment on this proposal. The Commission also seeks comment on whether the current pre-approval guidance rule (or the use of KDBs) should be revised or clarified consistent with the Commission goals in this proceeding.

As the Commission has noted, following a TCB's grant of certification, the Commission will post information on that grant ''in a timely manner'' on the Commission-maintained public EAS database. As the Commission has also noted, the TCB or Commission may set aside a grant of certification within 30 days of the grant date if it is determined that such authorization does not comply with applicable requirements or is not in the public interest. To what extent should interested parties, whether the public or government entities (*e.g.,* other expert agencies) be invited to help inform the Commission as to whether particular equipment inadvertently received a grant by the TCB and is in fact (or might be) ''covered'' equipment such that the grant should be set aside? Should the Commission consider adopting any new procedures for gathering and considering information

on potentially relevant concerns that the initial grant is not in the public interest and should be set aside? Should such procedures be limited to certain parties (*e.g.,* expert agencies), or certain minimal showings required by those that seek to raise questions about the grant?

Section 2.962(g) of the Commission's current rules expressly provides for ''post-market surveillance'' activities with respect to products that have been certified. The Commission proposes to direct OET, in exercising its delegated authority, to provide TCBs with guidance on the kinds of post-market surveillance that should be conducted to help ensure that no equipment that subsequently has been authorized includes ''covered'' equipment that has not been authorized. Here, the Commission seeks comment on whether revisions or clarifications to the post-market surveillance requirements should be adopted. Under existing rules, each TCB is required to conduct type testing of samples of product types that it has certified. OET has delegated authority to develop procedures that TCBs will use for performing such post-market surveillance, including the responsibility for publishing a document on the post-market surveillance requirements that will provide specific information such as the numbers and types of samples the TCBs must test. OET may also request that a grantee of equipment certification submit a sample directly to the TCB that performed the original certification for its evaluation. TCBs also may request samples directly from the grantee. If in this post-market surveillance, the TCB determines that the product fails to comply with the technical regulation for that product, the TCB then notifies the grantee and the grantee must then describe actions taken to the correct the situation. The TCB provides a report of these actions to the Commission within 30 days.

The Commission also seeks comment on how the rules should be implemented, or revised or clarified, to ensure that equipment users will not make modifications to existing equipment that would involve replacing equipment (in whole or part) with ''covered'' equipment. Should, for instance, the Commission revise or clarify its section 2.932 rules regarding modifications or the section 2.1043 provisions concerning ''permissive changes,'' to promote the Commission goals in this proceeding? The Commission also notes that section 2.929 of the equipment authorization rules includes provisions regarding changes in the name, address, ownership, or control of the grantee of an equipment authorization. An equipment authorization may not be assigned, exchanged, or in any other way transferred to a second party, except as provided in this section. Should the Commission consider any revisions or clarifications about how these provisions apply in light of the Commission proposals regarding prohibition on authorization of ''covered'' equipment? For example, should the Commission prohibit the ownership or control of the certification for any equipment on the Covered List from being assigned, exchanged, or transferred to another party?

Under the Commission's part 2 rules concerning equipment authorization, various provisions are included that help ensure that applicants and TCBs comply with their responsibilities related to the Commission's equipment authorization procedures set forth in part 2 subpart J. The Commission notes, for instance, that pursuant to section 2.911(d)(1), applicants must provide a written and signed certification to the TCB that all statements in its request for equipment authorization are true and correct to the best of its knowledge and belief. TCBs, which are subject to the accreditation process, must comply with all applicable responsibilities set forth in the Commission part 2 rules for TCBs, and if the Commission were to adopt the proposal, would be obligated to prohibit the certification of any ''covered'' equipment. In reviewing the applications, TCBs would be required to dismiss any application should they become aware that an applicant has falsely asserted that its equipment (or components of the equipment) is not ''covered'' equipment. The Commission seeks comment on the implementation of these rules in the context of prohibiting certification of ''covered'' equipment, and any revisions or clarifications that may be appropriate to ensure that from this point forward applicants and TCBs comply with the proposed prohibition on authorization of ''covered'' equipment. Should the Commission's existing rules or procedures concerning ensuring compliance be enhanced with respect to applicants that intentionally attempt to circumvent the rules or TCBs that repeatedly fail to meet their responsibilities to comply with the Commission proposed prohibition?

The Commission seeks comment on revisions that could better ensure that applicants comply with the proposed requirements. Under the Commission's current equipment certification rules, the grantee of the certification is responsible for compliance of the equipment with the applicable requirements as the ''responsible party,'' as set forth in section 2.909(a). In 2017, the Commission revised the rules applicable to equipment authorized through the SDoC process (discussed below) to require that the parties responsible under the SDoC rules for compliance of equipment authorized under those provisions must be located within the United States. 47 CFR 2.909(b); 2.1077(a)(3). Many certified devices are also manufactured outside of the United States, and there may be no party within the country other than the importer that the Commission could readily contact if the equipment is not compliant with the Commission's requirements. Accordingly, the Commission proposes adopting the same requirement previously adopted with regard to responsible parties in the SDoC process with regard to responsible parties associated with equipment authorized through the equipment certification process. The Commission seeks comment. Relatedly, the Commission has encountered difficulties in achieving service of process for enforcement matters involving foreign-based equipment manufacturers. Should the Commission also require that the applicant for certification of equipment include a party and/or an agent for service of process that must be located in the United States? How much additional burden, if any, would these requirements place on applicants as compared to the current level of effort needed to prepare an equipment certification application? Should the Commission impose a similar requirement on existing equipment certification grantees? If so, how would the Commission do so? If not, how should the Commission address the difficulty in obtaining service of process on certain foreign-based equipment manufacturers?

As discussed above, PSHSB will periodically publish updates to identify the ''covered'' equipment and services that are on the Covered List. Under the proposals, the Commission accordingly directs that OET expeditiously take all the appropriate steps (*e.g.,* updating as necessary the precise certification that applicants must make that no newly identified ''covered'' equipment is associated with the application, as well as updating any pre-approval guidance, KDB, or other guidance) to reflect those updates, consistent with the rules and procedures that the Commission ultimately adopts regarding the certification rules in this proceeding. The Commission invites comment on

appropriate means for OET to include updates of the ''covered'' equipment in an expeditious fashion in ways that best ensure that applicants, TCBs, and other interested parties will comply with the prohibitions concerning this updated identification of ''covered'' equipment.

Finally, the Commission seeks comment on whether there are other rule revisions or clarifications to the equipment certification rules and processes that the Commission should make consistent with the goals to prohibit authorization of ''covered'' equipment. Commenters should explain their suggestions in sufficient detail, including the reasoning behind the suggestions and associated issues (*e.g.,* implementation). While the proposed prohibition would be reflected in the Commission's rules and the engagement with TCBs in ensuring compliance, the Commission also seeks comment on any other types of action or activity (*e.g.,* outreach and education) that would be helpful to ensure that all parties potentially affected by these changes understand the changes and will comply the prohibition associated with ''covered'' equipment.

c. Supplier's Declaration of Conformity (SDoC) Rules

Background. The Supplier's Declaration of Conformity (SDoC) process is available for many types of equipment that have less potential to cause RF interference. Under the Commission rules, the types of equipment that may be processed pursuant to the SDoC procedures include fixed microwave transmitters (*e.g.,* point-to-point or multipoint transmitter links as well as some links used by carriers and cable operators) authorized under part 101, broadcast TV transmitters authorized under parts 73 and 74, certain ship earth station transmitters authorized under part 80 (Maritime), some emergency locator transmitters authorized under part 87 (Aviation), and private land mobile radio services equipment and equipment associated with special services such as global maritime distress and safety system, aircraft locating beacons, ocean buoys), certain unlicensed equipment (*e.g.,* business routers, firewalls, internet routers, internet appliances, wired surveillance cameras, business servers, workstations, laptops, almost all enterprise network equipment, computers, alarm clocks) that includes digital circuitry (but no radio transmitters) authorized under part 15, certain ISM equipment (*e.g.,* those that use RF energy for heating or producing work) authorized under part 18. The SDoC process differs significantly from the certification process for equipment authorizations, and relies on determinations about the equipment made by the party responsible for compliance (''responsible party'' as defined in the rules) as to whether the equipment ''conforms'' with the Commission's requirements. Using the more streamlined SDoC process for the equipment authorization is ''optional'' insofar as the responsible party may choose to apply for equipment certification through the equipment certification process even if SDoC is acceptable under the Commission rules.

In the SDoC process, the responsible party makes the necessary measurements and completes other procedures found acceptable to the Commission to ensure that the particular equipment complies with the appropriate technical standards for that device. The information provided with devices subject to SDoC must include a compliance statement that lists a U.S.-based responsible party. As set forth in the rules, the responsible party for equipment subject to the SDoC process could include the equipment manufacturer, the assembler (if the equipment is assembled from individual component parts and the resulting system is subject to authorization), or the importer (if the equipment by itself or the assembled system is subject to authorization), and could also include retailers and parties performing modification under certain circumstances. 47 CFR 2.909(b)(1)–(2); 47 CFR 2.909(b)(3)–(4). The SDoC signifies that the responsible party has determined that the equipment has been shown to comply with the applicable technical standards. Given the streamlined nature of this particular process, responsible parties are not typically required to submit to the Commission an equipment sample or representative data demonstrating compliance. Also, while the Commission rules require that the equipment authorized under the SDoC procedure must include a unique identifier, the equipment is not listed in a Commission equipment authorization database, they are required to retain records on the equipment that demonstrate the equipment's compliance with the Commission's applicable requirements for that equipment. 47 CFR 2.1074; 47 CFR 2.938. The Commission can specifically request that the responsible parties provide such information on particular equipment to the Commission. 47 CFR 2.906(a); 2.945(b)(1).

Discussion. The Commission proposes that any equipment produced or provided by any of the entities (or their respective subsidiaries or affiliates) that produce or provide ''covered'' equipment, as specified on the Covered List, can no longer be authorized pursuant to the Commission's SDoC processes, and the equipment of any of these entities would have to be processed pursuant to the Commission's certification rules and processes as proposed above. Accordingly, responsible parties would be prohibited altogether from using the SDoC process with respect to any equipment produced or provided, in whole or part, by these entities (or their respective subsidiaries or affiliates), and such equipment would be prohibited from utilizing the SDoC process. That is not to say that all equipment produced or provided by these entities currently subject to the SDoC process would be prohibited; as the Commission discussed above, under the current rules, responsible parties always have the option of seeking equipment authorization through the Commission's equipment certification procedures. Under the Commission's proposed rules, responsible parties would now be required to use the certification procedures for any equipment produced or provided by these entities, as the option of using the SDoC processes would no longer be available. This proposal will help ensure consistent application of the Commission's proposed prohibition on further equipment authorization of any ''covered'' equipment by requiring use of only one process, which includes the Commission's more active oversight and proactive guidance when working directly with TCBs prior to any equipment authorization in the first place, and in guiding appropriate post-market surveillance after any equipment authorization. The Commission finds this approach consistent with the public interest.

The Commission seeks comment on the specific information that must be included in the SDoC compliance statement that will ensure that responsible parties do not use the SDoC process for ''covered'' equipment. This compliance statement would need to be sufficiently complete to require a responsible party to exercise necessary diligence with respect to the equipment that it is subjecting to the SDoC process that will ensure that it is attesting, in clear terms, that the equipment (or any component part thereof) is not produced or provided by any entity that has produced or provided ''covered'' equipment on the Covered List. This compliance statement should be crafted in such a manner as to assist responsible

parties in identifying equipment that can no longer be processed through the SDoC process while also ensuring that responsible parties are held accountable, by their compliance statement, for any misrepresentations or violation of the prohibition that the Commission is proposing. The Commission notes that current rules require that the responsible party be located within the United States. 47 CFR 2.1077(a)(3). As discussed above regarding equipment subject to the certification process, should the Commission also require that the compliance statement include the name of a U.S. agent for service of process (if different from the responsible party)?

What steps should the Commission take to help inform responsible parties that use the SDoC process of this proposed prohibition, as well as the requirement that any equipment (including component parts) produced or provided by entities (and their subsidiaries and affiliates) that produce or provide ''covered'' equipment must be subject to the equipment certification process? The Commission notes that the rules allow many entities to take on the role of a responsible party under the part 2 rules, including retailers and parties performing modifications to equipment. The Commission seeks comment on how best to ensure that all responsible parties that use the SDoC processes to enable importing or marketing of equipment in the United States will understand and comply with the Commission's proposed revisions with respect to equipment produced or provided by entities that produce or provide ''covered'' equipment on the Covered List. What types of actions or activities (*e.g.,* outreach and education) to equipment manufacturers, assemblers, importers, retailers, parties performing modification under certain circumstances, and others that serve as responsible parties and use the SDoC process regarding particular equipment would be advised and most helpful? Should the Commission impose a similar requirement with respect to existing authorizations obtained through the SDoC process? If so, how would the Commission do so? If not, how should the Commission address the difficulty of obtaining service of process on certain foreign-based equipment manufacturers?

As noted above, the Commission can specifically request that the responsible parties provide information on any equipment to the Commission that has been authorized through the SDoC process. Under the Commission's proposal, in an effort to ensure that responsible parties are complying with the prohibition, the Commission would exercise its equipment authorization oversight, as appropriate, in requesting that the responsible parties provide information—*e.g.,* an equipment sample, representative data demonstrating compliance, and the compliance statement itself—regarding particular equipment to the Commission. The Commission seeks comment on what kinds of situations in which such requests might be appropriate. What kinds of information might inform the Commission's consideration as to whether any equipment may have been inappropriately processed through the SDoC process, thus triggering the Commission's request for information from the responsible party to make sure that no violation of the Commission's prohibition has occurred?

As the Commission has discussed, PSHSB will periodically publish updates to identify the ''covered'' equipment on the Covered List. As with the equipment certification proposals above, the Commission would direct that OET expeditiously take all the appropriate steps (*e.g.,* updating as necessary the information that SDoC applicants must make to establish that no newly identified ''covered'' equipment is associated with the application to reflect those updates), consistent with the rules and procedures that the Commission ultimately adopts regarding the SDoC rules in this proceeding. The Commission invites comment on appropriate means for OET to include updates of the ''covered'' equipment in an expeditious fashion in ways that best ensure that applicants, responsible parties, and other interested parties will comply with the prohibitions that the Commission has proposed.

Finally, the Commission seeks comment on whether there are other rule revisions or clarifications to the SDoC rules and processes that the Commission should make consistent with the goals to prohibit authorization of ''covered'' equipment. Commenters should explain their suggestions in sufficient detail, including the reasoning behind the suggestions and associated issues (*e.g.,* implementation).

d. Legal Authority

Adopting rules that take security into consideration in the equipment authorization process would serve the public interest by addressing significant national security risks that have been identified by this Commission in other proceedings, and by Congress and other federal agencies, and doing so would be consistent with the Commission's statutory ''purpose of regulating interstate and foreign commerce in communication by wire and radio . . . for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communications.'' 47 U.S.C. 151. The Commission tentatively concludes that doing so is not specifically authorized by the Secure Networks Act itself, pursuant to which the Commission adopted the Covered List. However, the Commission has broad authority to adopt rules, not inconsistent with the Communications Act, ''as may be necessary in the execution of its functions.'' 47 U.S.C. 154(i). The Commission believes that, in order to ensure that the Commission's rules under the Secure Networks Act effectively preclude use of equipment on the Covered List by USF recipients as contemplated by Congress, it is necessary to rely on the Commission's established equipment authorization procedures to restrict further equipment authorization, and the importation and marketing, of such devices in the first instance. As discussed above, the Commission also relies on the equipment authorization process to implement other statutory duties, including the duty to promote efficient use of the radio spectrum, the duties under the National Environmental Policy Act to regulate human RF exposure, the Commission's duty to ensure that mobile handsets are compatible with hearing aids, and the duty to deny federal benefits to certain individuals who have been convicted multiple times of federal offenses related to trafficking in or possession of controlled substances. The Commission believes that these processes can and should also serve the purpose of fulfilling other Commission responsibilities under the Secure Networks Act, and the Commission seeks comment on that issue.

The Commission also believes that other authorities in the Communications Act of 1934, as amended, provide authority for the Commission to rely on for the proposed modifications to its rules and procedures governing equipment authorization. Since Congress added section 302 to the Act, the Commission's part 2 equipment authorization rules and processes have served to ensure that RF equipment marketed, sold, imported, and used in the United States complies with the applicable rules governing use of such equipment. *See Equipment Authorization of RF Devices,* Docket No. 19356, Report and Order, 39 FR 5912, 5912, para. 2 (1970). That section

authorizes the Commission to, ''consistent with the public interest, convenience, and necessity, make reasonable regulations . . . governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications.'' 47 U.S.C. 302(a)(1). Regulations that the Commission adopts in implementing that authority ''shall be applicable to the manufacture, import, sale, offer for sale, or shipment of such devices and . . . to the use of such devices.'' 47 U.S.C. 302(a)(2). The authorization processes are primarily for the purpose of evaluating equipment's compliance with technical specifications intended to minimize the interference potential of devices that emit RF energy. As noted above, however, these rules are also designed to implement other statutory responsibilities. The Commission seeks comment on the scope of the authority to rely on such rules to effectuate other public interest responsibilities, including the Commission's section 303(e) authority to ''[r]egulate the kind of apparatus to be used with respect to its external effects.'' 47 U.S.C. 303(e). Does Congress's inclusion of the phrase ''to be used,'' rather than ''used,'' give the Commission authority to prevent the marketing and sale of equipment in addition to preventing licensees and others from using such equipment?

Alternatively, does the ''public interest'' phrase in section 302 itself provide independent authority to deny equipment authorization to equipment deemed to pose an unacceptable security risk? Section 302(a) directs the Commission to make reasonable regulations consistent with the public interest governing the interference potential of devices; it would appear to be in the public interest not to approve devices capable of emitting RF energy in sufficient degree to cause harmful interference to radio communications if such equipment has been deemed, pursuant to law, to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. The Commission seeks comment on this tentative conclusion.

The Commission also seeks comment on a potential alternative basis for such security rules. The Communications Assistance for Law Enforcement Act (CALEA) includes security requirements that apply directly to equipment intended for use by providers of telecommunications services. 47 U.S.C. 1001–1010. Section 105 requires telecommunications carriers to ensure that the surveillance capabilities built into their networks ''can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of the carrier acting in accordance with regulations prescribed by the Commission,'' (47 U.S.C. 1004) and the Commission has concluded that its rule prohibiting the use of equipment produced or provided by any company posing a national security threat implements that provision. *Supply Chain First Report and Order,* 34 FCC Rcd at 11436–37, paras. 35–36. The Commission is required to prescribe rules necessary to implement CALEA's requirements. 47 U.S.C. 229. Would rules prohibiting authorization of equipment on the Covered List, or that otherwise poses security risks, be justified as implementation of CALEA?

As noted above, the Commission believes it has ancillary authority under section 4(i) of the Act to adopt these revisions to its part 2 rules as reasonably necessary to the effective enforcement of the Secure Networks Act. The Commission also tentatively concludes that such rules would be consistent with the Commission's specific statutorily mandated responsibilities under the Communications Act to make reasonable regulations consistent with the public interest governing the interference potential of electronic devices, to protect consumers through the oversight of common carriers under Title II of that Act, and to prescribe the nature of services to be rendered by radio licensees under section 303(b) of that Act. The Commission seeks comment on this reasoning as well. The Commission also seeks comment on any other sources of authority for the Commission proposed rules.

e. Cost-Effectiveness Analysis

The Commission's proposed revisions to the equipment authorization rules and processes to prohibit authorization of any ''covered'' equipment on the Covered List would apply only to equipment that has been determined by other agencies to pose ''an unacceptable risk'' to national security. The Commission has already concluded that it has no discretion to disregard determinations from these sources, which are enumerated in section 1.50002(b) of its rules. Hence, the Commission accepts the determination of these expert agencies.

Because the Commission has no discretion to ignore these determinations, the Commission believes that a conventional cost-benefit analysis—which would seek to determine whether the costs of the proposed actions exceed their benefits—is not directly called for. Instead, the Commission will consider whether the proposed actions would be a cost-effective means to prevent this dangerous equipment from being introduced into the nation's communications networks.

The Commission therefore seeks comment on the cost-effectiveness of the proposed revisions to the rules and procedures associated with the Commission's equipment authorization rules under part 2. Do the Commission's proposed rules promote the goals of ensuring that the national security interests are adequately protected from equipment on the Covered List, while simultaneously continuing the mission of making communications services available to all Americans? Are there alternative approaches that would achieve this goal in a more cost-effective manner?

2. Devices Exempt From the Requirement of an Equipment Authorization

Background. Under the Commission's rules, certain types of RF devices are exempt from demonstrating compliance under one of the equipment authorization procedures (either certification or SDoC). This exemption applies to specified digital devices in several types of products, including many part 15 devices (including incidental and unintentional radiators) because they generate such low levels of RF emission that they have virtually no potential for interfering with authorized radio services. *Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices without an Individual License,* GN Docket No. 87–389, Notice of Proposed Rulemaking, 2 FCC Rcd 6135, 6140, para. 39 (1987). In other services, the Commission has determined that because operators must be individually licensed and responsible for their stations (*e.g.,* Amateur Radio Service) or the type of operation poses low risk of harmful interference, such an exemption is warranted. *See, e.g.,* 47 CFR 97.315. Exempt devices are required to comply with general conditions of operation, including the requirement that if an exempt device causes interference to other radio services the operator of that device must cease operating the device upon notification from the Commission and must remedy the interference. *See* 47 CFR 15.5.

The most diverse set of exempted devices operate under the part 15 unlicensed device rules. The categories of part 15 exempt devices include

incidental radiators, unintentional radiators exempt under section 15.103, and subassemblies exempt under section 15.101. Specifically, section 15.103 of the Commission's rules provides that certain unintentional radiators, which are subject to the general conditions of operation provided in part 15, are exempt from the specific technical standards and other requirements of part 15. This includes: (1) Digital devices used exclusively in any transportation vehicle as an electronic control or power system equipment used by a public utility or in an industrial plant, as industrial, commercial, or medical test equipment, or in an appliance (*e.g.,* microwave oven, dishwasher, clothes dryer, air conditioner, etc.); (2) specialized medical digital devices; (3) digital devices that have very low power consumption (*i.e.,* not exceeding 6 nW); (4) joystick controllers or similar devices used with digital devices; and (5) digital devices that both use and generate a very low frequency (*i.e.* less than 1.705 MHz) and which do not operate from the AC power lines or contain provisions for operation while connected to the AC power lines. Digital device subassemblies also are exempt from equipment authorization under section 15.101. Examples of subassemblies include circuit boards, integrated circuit chops, and other components that are completely internal to a product that do not constitute a final product. These include internal memory expansion boards, internal disk drives, internal disk drive controller boards, CPU boards, and power supplies. Subassemblies may be sold to the general public or to manufacturers for incorporation into a final product.

Discussion. The Commission recognizes that ''covered'' equipment potentially could include equipment that currently is exempt from the need to demonstrate compliance under the Commission's equipment authorization processes, which, to date, has looked only at the RF emissions capability of equipment. As noted above, most devices that are generally exempt from the Commission's equipment authorization requirements typically have such low RF emissions that they present virtually no potential for causing harmful interference to the authorized radio services. However, the Commission's concerns in relation to security considerations that pose unacceptable risks to the nation's communications networks are distinct from the concerns related to interference to authorized services. As such, the Commission finds it necessary to assess the regulation of otherwise exempt devices in relation to security concerns.

Accordingly, the Commission seeks comment on whether the Commission should consider possible revisions or clarifications to its rules to address issues related to ''covered'' equipment and the potential of such equipment, regardless of RF emissions characteristics, to pose an unacceptable risk to U.S. networks or users. The Commission seeks comment on whether the Commission should revise its rules to no longer provide an equipment authorization exemption to ''covered'' equipment. The Commission seeks comment on whether such a provision, if adopted, should apply only to part 15 unlicensed devices or should include any device, regardless of rule part under which it operates, in the consideration of possible revisions or clarifications to the Commission's rules to address issues related to ''covered'' equipment and the potential of such equipment, regardless of RF emissions characteristics, to nonetheless pose an unacceptable risk to U.S. networks or users. The Commission also asks whether it should require that any equipment (in whole or in part), regardless of claim of exemption, that is produced or provided by any entity that has produced or provided ''covered'' equipment on the Covered List be processed pursuant to the Commission's certification rules and processes (similar to the proposal requiring use of the certification process for such equipment instead of continued use of the SDoC process).

Currently, devices that are exempt from the equipment authorization requirement are not subject to FCC testing, filing, or record retention requirements. Such devices ordinarily would come to the attention of the Commission only in the event that harmful interference with other devices becomes an issue. In order to determine whether otherwise exempt ''covered'' equipment may present a security concern, the Commission would need to implement some means by which to identify such equipment that is in use in the United States. The Commission seeks comment on possible methods that the Commission could implement to identify otherwise exempt equipment. The Commission could, for instance, implement a registration system for otherwise exempt equipment produced or provided by any of the entities (or their respective subsidiaries or affiliates) that produce or provide ''covered'' equipment, as specified on the Covered List. Such a system could require that relevant responsible parties notify the Commission of the marketing, importation, or operation of such otherwise exempt equipment. Such notification would include identification of the responsible party, manufacturer, or importer and the general operating parameters of the equipment. Another example includes an attestation at time of marketing or import that the equipment is not ''covered.'' What are some potential burdens to responsible parties or other entities that would arise in connection with such a registration or attestation system? In what ways and to what extent would such burdens be acceptable to responsible parties to help protect the U.S. against the related security concerns? What type of information, and from which entities, should the Commission collect in order to identify otherwise exempt ''covered'' equipment? How many responsible parties would be impacted by these potential information collections and in what way would it impact their ability to conduct business? If the Commission were to revise its rules to remove the exemption with respect to ''covered'' equipment, the Commission seeks comment on any other types of action or activity (*e.g.,* outreach and education) that also would be helpful to ensure that all parties potentially affected by these changes understand the changes and will comply the prohibition associated with ''covered'' equipment.

The Commission discussed above the legal authority associated with the Commission's proposal to prohibit authorization of ''covered'' equipment in its equipment authorization process. The Commission tentatively concludes that the legal bases enunciated above also provide, pursuant to section 302 and section 4(i) of the Act, for actions that the Commission might take with respect to precluding ''covered'' equipment from being exempted from the equipment authorization process. The Commission seeks comment on this tentative conclusion.

If the Commission were to conclude that the rules should be revised to prohibit certain ''covered'' equipment from being exempted from the equipment authorization processes, this action would apply only to equipment that has been determined by other agencies to pose ''an unacceptable risk'' to national security. Because the Commission has no discretion to ignore these determinations, it believes that a conventional cost-benefit analysis—which would seek to determine whether the costs of the proposed actions exceed their benefits—is not necessary. Instead, as discussed above, the Commission will consider whether the proposed actions would be an effective means to

prevent this dangerous equipment from being introduced into the nation's communications networks.

3. Revoking Equipment Authorizations

The actions that the Commission proposes above would serve to prohibit any prospective authorization of ''covered'' communications equipment on the Covered List as posing an unacceptable risk to national security. Those proposed actions do not, however, address whether the Commission could or should revoke any existing equipment authorizations of such ''covered'' communications equipment, and if so, the processes for doing so. The Commission addresses those issues here.

Background. Section 2.939 sets forth the Commission's rules for revoking authorizations of equipment. Section 2.939(a)(1) provides that the Commission may revoke an equipment authorization ''[f]or false statements or representations either in the application or in materials or response submitted in connection therewith'' or in records that the responsible party is required to maintain about the authorized equipment (*e.g.,* drawings and specifications, description of the equipment, any test report, equipment compliance information). Section 2.939(a)(2) states that the Commission may revoke an equipment authorization ''[i]f upon subsequent inspection or operation it is determined that the equipment does not conform to the pertinent technical requirements or to the representations made in the original application.'' Section 2.939(a)(3) provides that the Commission may revoke an equipment authorization ''[i]f it is determined that changes have been made in the equipment other than those authorized by the rules or otherwise expressly authorized by the Commission.'' Section 2.939(a)(4) provides that the Commission may revoke any equipment authorization ''[b]ecause of conditions coming to the attention of the Commission which would warrant it in refusing to grant an original application.'' As set forth in § 2.939(b) of the Commission's rules, the procedures for revoking an equipment authorization are the same procedures as revoking a radio station license under section 312 of the Communications Act. *See* 47 CFR 2.939(b); 47 U.S.C. 312. Finally, under § 2.939(c), the Commission also ''may withdraw any equipment authorization in the event of changes in its technical standards.''

Discussion. If the Commission adopts the rules proposed above to prohibit any further authorization of ''covered'' equipment on the Covered List, the Commission seeks comment here on the extent to which the Commission should revoke any existing equipment authorizations of such ''covered'' equipment pursuant to the Commission's section 2.939 revocation rules. The Commission notes that if it revoked an existing equipment authorization, the marketing of that equipment would be prohibited pursuant to part 2 subpart I, per section 2.803(b), and import and marketing would be prohibited pursuant to part 2 subpart K, per sections 2.1201(a) and 2.1204(a).

The Commission tentatively concludes that sections 2.939(a)(1) and (2) would apply to ''covered'' equipment, such that the Commission has authority to revoke any existing equipment authorizations that may have been granted under false statements or representations (including non-disclosure) concerning whether an equipment authorization application that was subsequently granted had in fact included ''covered'' equipment (in whole or as a component part). *Shenzhen Tangreat Technology Co., Ltd.,* 30 FCC Rcd 3501,3505, paras. 12–14 (EB 2015) (*Shenzhen*) (''substantial and material questions exist as to whether the authorization should be revoked because the information in the application was false or misleading''). This would enable the Commission to revoke any equipment authorizations that are granted after adoption of the rules proposed in this NPRM, even if the TCBs or the Commission had not acted to set aside the grant within the 30-day period following the posting of the grant on the Equipment Authorization System (EAS) database. The Commission seeks comment on this tentative conclusion.

To assure that otherwise authorized equipment is not subsequently replaced by any ''covered'' equipment (whether in whole or with component part(s) of ''covered'' equipment), the Commission also tentatively concludes that section 2.939(a)(3) would apply, and that the Commission can revoke an existing equipment authorization if changes have been made in the equipment other than those authorized by the rules or otherwise expressly authorized by the Commission. *Shenzhen,* 30 FCC Rcd at 3505–06, paras. 15–17 (Commission investigation demonstrated that the equipment marketed does not match the specifications described in the granted application). The Commission seeks comment on these and any other scenarios that implicate the need to revoke an existing equipment authorization to exclude ''covered'' equipment from the U.S. market.

The Commission also seeks comment on other circumstances that would merit Commission action to revoke any existing authorization of ''covered'' equipment. Under what circumstances should the Commission revoke an existing authorization? For instance, to what extent does section 2.939(a)(4), which allows revocation ''[b]ecause of conditions coming to the attention of the Commission which would warrant it in refusing to grant an original application,'' provide guidance? Specifically, if the Commission would not have granted an application with equipment from an entity on the Covered List under newly adopted rules, then could the Commission use section 2.939(a)(4) to revoke an equipment authorization with said equipment that had been granted prior to the adoption of the rule? *Shenzhen,* 30 FCC Rcd at 3506, paras. 18–20 (when Commission investigation determined device was a radio frequency jammer, ''substantial and material questions exist as to whether the application should have been granted''), *see also J Communications Co., Ltd.,* 19 FCC Rcd 10643, 10645, para. 9 (EB 2004) (revoking GMRS radios because the Commission could have denied the original equipment authorization application for the devices ''had this fact been made known to the Commission''). The Commission seeks comment on this approach and on any other approach or particular circumstances that would merit Commission action to revoke any existing authorization that concerns ''covered'' equipment on the Covered List.

The Commission seeks comment on the applicability of section 2.939(c), which states that the Commission also ''may withdraw any equipment authorization in the event of changes in its technical standards,'' with regard to revocation of authorizations that include ''covered'' equipment. In the event the Commission were to adopt rules barring new equipment authorizations for equipment on the Covered List, it tentatively concludes that such a change should constitute a change to the Commission's technical standards that could warrant withdrawal of equipment authorizations that are contrary to these new rules. The Commission seeks comment.

In addition, the Commission seeks comment on the specific procedures the Commission should use if and when it seeks to revoke an existing equipment authorization. Section 2.939(b) requires that revocation of an equipment authorization must be made in the ''same manner as revocation of radio

station licenses,'' and thus presumably would include the requirement that the Commission serve the grantee/responsible party with an order to show cause why revocation should not be issued and must provide that party with an opportunity for a hearing. *See* 47 U.S.C. 312(c). The Commission seeks comment on this requirement. What precisely are the procedures that the Commission should employ if seeking to revoke particular ''covered'' equipment? As the Commission discussed above, § 2.939(c) authorizes the Commission to ''withdraw any equipment authorization in the event of changes in its technical standards.'' Pursuant to this provision, should the Commission provide a suitable amortization period for equipment already in the hands of users or in the manufacturing process? If so, what would that be? What other factors should the Commission consider that might warrant revocation under the new rules, such as those applicable to Title III licenses under section 312 of the Communications Act? 47 U.S.C. 312. Should the Commission revise or clarify the existing requirements to enable the Commission to revoke authorizations of this ''covered'' equipment given that it already has been determined that the equipment poses an unacceptable risk?

In considering whether any existing equipment authorizations of ''covered'' equipment should be revoked, is there some process in which the Commission should engage to help identify particular equipment authorizations that should be considered for revocation? What process should the Commission use to identify equipment authorizations for revocation? For example, to what extent might the Commission rely on others' reports of a violation, and to what extent might such reports need to be supported in the record or independently verified? If the Commission were to conclude that revocation may be appropriate regarding particular ''covered'' equipment, this action would apply only to equipment that has been determined by other agencies to pose ''an unacceptable risk'' to national security. The Commission nonetheless recognizes the need to avoid taking actions that are overbroad in terms of affecting users of the equipment or would require removal of this equipment faster than it reasonably can be replaced. If the Commission concludes that revocation may be appropriate regarding particular ''covered'' equipment, the Commission seeks comment on the appropriate and reasonable transition period for removing that particular equipment. This could include a transition period for non-conforming equipment to make any necessary modifications to communications equipment or services, including removing the ''covered equipment'' (in whole or as a component) from that equipment or service. To what extent should the Commission apply different transition periods to different equipment authorizations that the Commission revokes? Are there any situations that might merit immediate compliance with the new equipment restrictions? Pursuant to section 503(b)(5) of the Act, the Commission must issue citations against non-regulatees for violations of FCC rules before proposing any monetary penalties. 47 U.S.C. 503(b)(5). Such citations ''provide notice to parties that one or more actions violate the Act and/or the FCC's rules—and that they could face a monetary forfeiture if the conduct continues.'' *See* Federal Communications Commission, Enforcement Bureau, ''Enforcement Overview'' at 10 (April 2020), *https://www.fcc.gov/sites/default/files/public_enforcement_overview.pdf.* Given this requirement, what enforcement policy would be appropriate for the continued marketing, sale, or operation of equipment by such parties during this transition period? What, if any, educational and outreach efforts should the Commission undertake to inform the public regarding any such revocations and their legal effect?

Finally, the Commission seeks comment on whether the Commission should make any revisions to § 2.939. Should this section be revised and/or clarified to specifically include ''covered'' equipment or whether the rule should be clarified to better encompass the intent in this rulemaking? What other specific revisions might be appropriate for consideration?

B. Competitive Bidding Certification

Background. The Commission's competitive bidding process requires each applicant to make various certifications as a prerequisite for participation in an auction. Requiring certifications as a condition of participation guards against potential harms to the public interest before the harms could occur.

As described above, the Commission has designated Huawei and ZTE, and their subsidiaries, parents, or affiliates, as companies that pose a national security threat to the integrity of communications networks and the communications supply chain. *See generally Huawei Designation Order,* 35 FCC Rcd 6604, *ZTE Designation Order,* 35 FCC Rcd 6633. As a result of this determination, funds from the Commission's Universal Service Fund may no longer be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by these covered companies.

In reaching this determination, the Commission noted Huawei's and ZTE's ties to the Chinese government and military apparatus, along with Chinese laws obligating it to cooperate with requests by the Chinese government to use or access its systems. *Huawei Designation Order,* 35 FCC Rcd at 6609, paras. 13–14. However, it also is well-established that the Chinese government helps fuel Huawei's growth by deploying powerful industrial policies to make Huawei equipment cheaper to deploy than the alternatives. Chuin-Wei Yap, *State Support Helped Fuel Huawei's Global Rise,* Wall Street Journal (Dec. 25, 2019), *https://www.wsj.com/articles/state-support-helped-fuel-huaweis-global-rise-11577280736.* These policies include both direct subsidies to Huawei and state-funded export financing.

To illustrate, a recent report by the Center for American Progress found that China's state-owned banks have provided billions of dollars to Huawei's customers. Melanie Hart and Jordan Link, Center for American Progress, *There Is a Solution to the Huawei Challenge* (Oct. 14, 2020), *https://www.americanprogress.org/issues/security/reports/2020/10/14/491476/solution-huawei-challenge/.* According to the report, these loans ''can make Huawei impossible to beat—even if competitors can match the company's state-subsidized prices—because China's state banks offer packages that commercial banks generally cannot match.'' *Id.* at para. 25. These loans may be run through Huawei or provided directly to Huawei's customers.

The Commission notes that the nature of state support for Huawei and ZTE has shifted over time. Recently, the Commission has observed how state-funded export financing may provide substantial funding to mobile operators already using equipment from Huawei or ZTE prior to national spectrum auctions in other countries. In one recent case, a Huawei customer was able to substantially outbid a rival new entrant in a spectrum auction—thereby denying entry to a new competitor that was planning on using trustworthy equipment in its 5G build-out.

Distortionary financing intended to support participation in spectrum auctions of network operators who then deploy covered equipment and services

may raise concerns about risks to the national security of the United States and the security and safety of United States persons. The Commission considers here the benefits of protecting against such risks prior to the start of a Commission auction.

Discussion. Given recent developments internationally, the Commission seeks comment on whether the Commission should require an applicant to participate in competitive bidding to certify that its bids do not and will not rely on financial support from any entity that the Commission has designated under section 54.9 of its rules as a national security threat to the integrity of communications networks or the communications supply chain. Could such support implicate the kinds of influence over the applicant that would pose risks to national security? Or could it distort auction outcomes in ways that would pose risks to national security? What challenges would an applicant have in satisfying such a certification, given potential uncertainties regarding the ultimate origin of financial support? Can the certification be crafted to address these challenges? Do these uncertainties present difficulties for the Commission in enforcing the certification? How can these difficulties be mitigated?

If the Commission adopts a requirement that an applicant certify that its bids do not and will not rely on financial support by an entity designated by the Commission as a national security threat, should the certification be limited to just the entities so designated by the Commission under section 54.9 or be more expansive? What are the challenges with including indirect provision of financing in the certification and how can they be mitigated to ensure it accomplishes its purpose? Should the certification be expanded to include an identified set of related entities, *e.g.,* entities subject to control by an entity designated by the Commission? What entities should such a set include? How does the fungibility of financial resources complicate compliance? How can enforcement challenges be alleviated?

IV. Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rule Making (Notice). 5 U.S.C. 603. (The RFA, 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996)). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a). In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**. 5 U.S.C. 603(a).

A. Need for, and Objectives of, the Proposed Rules

In this Notice of Proposed Rulemaking, we propose prohibiting the authorization of any equipment on the list of equipment and services (Covered List) that the Commission maintains pursuant to the Secure and Trusted Communications Networks Act of 2019. Secure and Trusted Communications Networks Act of 2019, Public Law 116–124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. 1601–1609) (Secure Networks Act). (The Commission's Public Safety and Homeland Security Bureau maintains the list at *https://www.fcc.gov/supplychain/coveredlist*). Such equipment has been found to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. We also seek comment on whether and under what circumstances we should revoke any existing authorizations of such ''covered'' communications equipment. Finally, we invite comment on whether we should require additional certifications relating to national security from applicants who wish to participate in Commission auctions.

B. Legal Basis

The proposed action is taken under authority found in sections 4(i), 301, 302, 303, 309(j), 312, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303, 309(j), 312 and 316; and § 1.411 of the Commission's rules, 47 CFR 1.411.

C. Small Businesses, Small Organizations, and Small Governmental Jurisdictions

Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. *See* 5 U.S.C. 601(3)–(6). First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. *See* SBA, Office of Advocacy, ''What's New With Small Business?'' *https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf* (Sept. 2019). These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses. *Id.*

Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS. *See* Exempt Organizations Business Master File Extract (E.O. BMF), ''CSV Files by Region,'' *https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf.*

Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' 5 U.S.C. 601(5). U.S. Census Bureau data from the 2017 Census of Governments (*see* 13 U.S.C. 161) indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. *See* U.S. Census Bureau, 2017 Census of Governments—Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. *https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html.* (Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* Table 2. CG1700ORG02 Table Notes_ Local Governments by Type and State_ 2017). Of this number there were 36,931

general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

Satellite Telecommunications. This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' *See* U.S. Census Bureau, *2017 NAICS Definition, ''517410 Satellite Telecommunications,'' https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017.* Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $35 million or less in average annual receipts, under SBA rules. *See* 13 CFR 121.201, NAICS Code 517410. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1251SSSZ4, *Information: Subject Series—Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012,* NAICS Code 517410, *https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517410&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false&vintage=2012.* Of this total, 299 firms had annual receipts of less than $25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

All Other Telecommunications. The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. *See* U.S. Census Bureau, *2017 NAICS Definition, ''517919 All Other Telecommunications,'' https://www.census.gov/naics/?input=517919&year=2017&details=517919.* This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. *Id.* Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. *Id.* The SBA has developed a small business size standard for ''All Other Telecommunications'', which consists of all such firms with annual receipts of $35 million or less. *See* 13 CFR 121.201, NAICS Code 517919. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1251SSSZ4, *Information: Subject Series—Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012,* NAICS Code 517919, *https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false.* Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999. *Id.* Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

Fixed Satellite Transmit/Receive Earth Stations. There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition. However, the majority of these stations could be impacted by our proposed rules.

Fixed Satellite Small Transmit/Receive Earth Stations. There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition. However, the majority of these stations could be impacted by our proposed rules.

Mobile Satellite Earth Stations. There are 19 licensees. We do not request nor collect annual revenue information and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition. However, it is expected that many of these stations could be impacted by our proposed rules.

Wireless Telecommunications Carriers (except satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. *See* U.S. Census Bureau, *2017 NAICS Definition, ''517312 Wireless Telecommunications Carriers (except Satellite),'' https://www.census.gov/naics/?input=517312&year=2017&details=517312.* The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. *See* 13 CFR 121.201, NAICS Code 517312 (previously 517210). For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517210, *https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.* Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1000 employees or more. *Id.* Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

Wireless Carriers and Service Providers. Neither the SBA nor the Commission has developed a size standard specifically applicable to Wireless Carriers and Service Providers. The closest applicable is Wireless Telecommunications Carriers (except Satellite) (*see* U.S. Census Bureau, *2017 NAICS Definition, ''517312 Wireless Telecommunications Carriers (except Satellite),'' https://www.census.gov/naics/?input=517312&year=2017&details=517312*), which the SBA small business size standard is such a business is small if it 1,500 persons or less. *Id.* For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517210,

https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Carriers and Service Providers are small entities.

According to internally developed Commission data for all classes of Wireless Service Providers, there are 970 carriers that reported they were engaged in the provision of wireless services. *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), *https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.* Of this total, an estimated 815 have 1,500 or fewer employees, and 155 have more than 1,500 employees. *See id.* Thus, using available data, we estimate that the majority of Wireless Carriers and Service Providers can be considered small.

Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' *See* U.S. Census Bureau, *2017 NAICS Definition, ''517311 Wired Telecommunications Carriers,'' https://www.census.gov/naics/?input=517311&year=2017&details=517311.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. *See* 13 CFR 121.201, NAICS Code 517311 (previously 517110). U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1251SSSZ5, *Information: Subject Series—Estab & Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517110, *https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.* Of this total, 3,083 operated with fewer than 1,000 employees. *Id.* Thus, under this size standard, the majority of firms in this industry can be considered small.

Licenses Assigned by Auctions. Initially, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

Private Land Mobile Radio (''PLMR''). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engag*ed in radiotelephone communications. See* U.S. Census Bureau, *2017 NAICS Definition, ''517312 Wireless Telecommunications Carriers (except Satellite),'' https://www.census.gov/naics/?input=517312&year=2017&details=517312.* The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. *See* 13 CFR 121.201, NAICS Code 517312 (formerly 517210). For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517210, *https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.* Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. *Id.* Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users. This figure was derived from Commission licensing records as of September 19, 2016. (Licensing numbers change on a daily basis. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of PLMR licensees that have fewer than 1,500 employees). There are a total of approximately 3,577 PLMR licenses in the 4.9 GHz band; 19,359 PLMR licenses in the 800 MHz band; and 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz. The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. *See* U.S. Census Bureau, *2017 NAICS Definition, ''334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,'' https://www.census.gov/naics/?input=334220&year=2017&details=334220.* Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. *Id.* The SBA has established a small business size standard for this industry of 1,250 employees or less. *See* 13 CFR 121.201, NAICS Code 334220. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012,* NAICS Code 334220, *https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&*

hidePreview=false. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. *Id.* Based on this data, we conclude that a majority of manufacturers in this industry are small.

Auxiliary Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). Neither the SBA nor the Commission has developed a size standard applicable to broadcast auxiliary licensees. The closest applicable SBA category and small business size standard falls under two SBA categories—Radio Stations and Television Broadcasting. The SBA size standard for Radio Stations is firms having $41.5 million or less in annual receipts. *See* 13 CFR 121.201, NAICS Code 515112. U.S. Census Bureau data for 2012 show that 2,849 radio station firms operated during that year. *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1251SSSZ4, *Information: Subject Series—Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012,* NAICS Code 515112, *https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515112&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false.* Of that number, 2,806 firms operated with annual receipts of less than $25 million per year and 17 with annual receipts between $25 million and $49,999,999 million. *Id.* For Television Broadcasting the SBA small business size standard is such businesses having $41.5 million or less in annual receipts. *See* 13 CFR 121.201, NAICS Code 515120. U.S. Census Bureau data show that 751 firms in this category operated in that year. *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1251SSSZ4, *Information: Subject Series—Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012,* NAICS Code 515120, *https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515120&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false.* Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999 and 70 had annual receipts of $50,000,000 or more. *Id.* Accordingly, based on the U.S. Census Bureau data for Radio Stations and Television Broadcasting, the Commission estimates that the majority of Auxiliary, Special Broadcast and Other Program Distribution Services firms are small.

Radio Frequency Equipment Manufacturers (RF Manufacturers). Neither the Commission nor the SBA has developed a small business size standard applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). There are several analogous SBA small entity categories applicable to RF Manufacturers—Fixed Microwave Services, Other Communications Equipment Manufacturing, and Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. A description of these small entity categories and the small business size standards under the SBA rules are detailed below.

Other Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). *See* U.S. Census Bureau, *2017 NAICS Definitions, ''334290 Other Communications Equipment Manufacturing,'' https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=334290&search=2017+NAICS+Search&search=2017.* Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (*e.g.,* highway, pedestrian, railway, traffic) manufacturing. *Id.* The SBA has established a size standard for this industry as all such firms having 750 or fewer employees. *See* 13 CFR 121.201, NAICS Code 334290. U.S. Census Bureau data for 2012 show that 383 establishments operated in that year. *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012,* NAICS Code 334290, *https://data.census.gov/cedsci/table?text=EC1231SG2&n=334290&tid=ECNSIZE2012.EC1231SG2&hidePreview=false&vintage=2012.* Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. *Id.* Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

Fixed Microwave Services. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service, Millimeter Wave Service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. There are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services. (These statistics are based on a review of the Universal Licensing System on September 22, 2015). The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. *See* 13 CFR 121.201, NAICS Code 517312 (previously 517210). For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1251SSSZ5, *Information: Subject Series, Estab and Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517210, *https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.* Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. *Id.* Thus under this SBA category and the associated size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies discussed herein. We note, however, that the microwave fixed

licensee category includes some large entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The proposals being made in this Notice may require additional analysis and mitigation activities to the part 2 rules that include various provisions to help ensure the integrity of the equipment authorization process. The Commission is authorized to dismiss or deny an application where that application is not in accordance with Commission requirements or the Commission is unable to make the finding that grant of the application would serve the public interest. The rules also require the TCB to perform ''post market surveillance'' of equipment that has been certified, with guidance from OET, as may be appropriate.

The Supplier's Declaration of Conformity (SDoC) process is available with respect to certain types of RF devices that have less potential to cause interference. The SDoC procedure requires the party responsible for compliance (''responsible party'') to make the necessary measurements and complete other procedures found acceptable to the Commission to ensure that the particular equipment complies with the appropriate technical standards for that device. At this time, the Commission's current equipment authorization rules do not include specific provisions addressing the ''covered'' equipment on the Covered List. This Covered List identifies communications equipment and services that pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. The Commission is required to include communications equipment and services on the list based exclusively on determinations made by Congress and by other U.S. government agencies. Currently, the list includes equipment and services produced or provided by five entities.

In this Notice we examine our rules relating to equipment authorization and participation in Commission auctions to help advance the Commission's goal of protecting national security and public safety. This builds on other actions the Commission recently has taken to protect and secure our nation's communications systems.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' 5 U.S.C. 603(c). In this proceeding, our proposals are consistent with (2), in that our goal is to seek comment on various steps that the Commission could take in its equipment authorization program, as well as its competitive bidding program, to reduce threats posed to our nation's communications system by ''covered'' equipment and services on the Covered List. We also seek comment on whether the Commission should revoke equipment authorizations of ''covered'' equipment, and if so under what conditions and procedures.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

List of Subjects

Communications, Communication equipment, Reporting and recordkeeping requirements, Telecommunications, and Wiretapping and electronic surveillance.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 2 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Add § 2.903 to subpart J to read as follows:

§ 2.903 Prohibition on equipment authorization of equipment on the Covered List.

Any equipment on the Covered List, as defined in § 1.50002 of this chapter, is prohibited from obtaining an equipment authorization under this subpart. This includes:

(a) Equipment subject to certification procedures: Telecommunication Certification Bodies and the Federal Communications Commission are prohibited from issuing a certification under this subpart for any equipment on the Covered List; and

(b) Equipment subject to Supplier's Declaration of Conformity procedures.

■ 3. Amend § 2.906 by adding paragraph (d) to read as follows:

§ 2.906 Supplier's Declaration of Conformity.

* * * * *

(d) All equipment produced or provided by any of the entities, or their respective subsidiaries or affiliates, that produce or provide ''covered'' equipment on the Covered List established pursuant to § 1.50002 of this chapter, is prohibited from obtaining equipment authorization through the Supplier's Declaration of Conformity process.

■ 4. Amend § 2.907 by adding paragraph (c) to read as follows:

§ 2.907 Certification.

* * * * *

(c) All equipment produced or provided by any of the entities, or their respective subsidiaries or affiliates, that produce or provide ''covered'' equipment, as specified on the Covered List established pursuant to § 1.50002 of this chapter, must obtain equipment authorization through the certification process.

■ 5. Amend § 2.909 by revising paragraph (a) to read as follows:

§ 2.909 Responsible Party.

(a) For equipment that requires the issuance of a grant of certification, the party to whom that grant of certification is issued is responsible for the compliance of the equipment with the applicable standards. If the radio frequency equipment is modified by any party other than the grantee and that party is not working under the authorization of the grantee pursuant to § 2.929(b), the party performing the modification is responsible for compliance of the product with the applicable administrative and technical provisions in this chapter. In either case, the responsible party must be located in the United States (see § 2.1033).

* * * * *

■ 6. Amend § 2.911 by adding paragraph (d)(5) to read as follows:

§ 2.911 Application requirements.

* * * * *

(d) * * *

(5) The applicant shall provide a written and signed certification that, as of the date of the filing of the application, the equipment for which the applicant seeks equipment authorization through certification is not ''covered'' equipment on the Covered List established pursuant to § 1.50002 of this chapter.

* * * * *

■ 7. Amend § 2.1033 by revising paragraph (b)(1) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) * * *

(1) The identification, by name, mailing address and telephone number or internet contact information, of the manufacturer of the device, the applicant for certification, and the responsible party as defined in § 2.909. The responsible party must be located within the United States.

* * * * *

[FR Doc. 2021–16085 Filed 8–18–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 21–264; FCC 21–83; FR ID 41217]

FCC Seeks To Enable State-of-the-Art Radar Sensors in 60 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to revise the Commission's rules to provide expanded operational flexibility to unlicensed field disturbance sensor (FDS) devices (*e.g.,* radars) that operate in the 57–64 GHz band (60 GHz band). The Commission's proposal recognizes the increasing practicality of using mobile radar devices in the 60 GHz band to perform innovative and life-saving functions, including gesture control, detection of unattended children in vehicles, and monitoring of vulnerable medical patients, and it is designed to stimulate the development of new products and services in a wide variety of areas to include, for example, personal safety, autonomous vehicles, home automation, environmental control, and healthcare monitoring, while also ensuring coexistence among unlicensed FDS devices and current and future unlicensed communications devices in the 60 GHz band.

DATES: Comments are due on or before September 20, 2021; reply comments are due on or before October 18, 2021.

ADDRESSES: You may submit comments, identified by ET Docket No. 21–264, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Anh Wride, Office of Engineering and Technology, 202–418–0577, *anh.wride@fcc.gov,* or Thomas Struble at 202–418–2470 or *Thomas.Struble@fcc.gov*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), in ET Docket No. 21–264, FCC 21–83, adopted on July 13, 2021 and released on July 14, 2021. The full text of this document is available for public inspection and can be downloaded at: *https://www.fcc.gov/document/fcc-seeks-enable-state-art-radar-sensors-60-ghz-band-0 or by using the search function for ET Docket No. 20–382 on the Commission's ECFS web page at www.fcc.gov/ecfs.*

Synopsis

Discussion. The Part 15 rules permit low-power intentional radiators (popularly known as ''unlicensed devices'') to operate without an individual license where such use is not anticipated to cause harmful interference to authorized users of the radio spectrum. Unlicensed devices in the 60 GHz band generally include indoor/outdoor communication devices such as WiGig wireless local area networking (WLAN) devices, outdoor fixed point-to-point communication links, and field disturbance sensors (FDS)—which includes radar operations. Unlicensed device users must account for the operations of authorized Federal and non-Federal users in the band, who operate under a variety of co-primary allocations. These allocations, which vary by band segment, consist of the Mobile, Fixed, Inter-Satellite, Earth-Exploration Satellite Service (EESS), Space Research, Mobile-Satellite, Radiolocation, Radionavigation, and Radionavigation-Satellite services.

Section 15.255 of the rules stipulates operational policies and technical parameters for the 60 GHz band. The rule limits FDS operations to fixed operation or when used as short-range devices for interactive motion sensing (SRIMS). Furthermore, a fixed FDS with an occupied bandwidth fully contained within the 61.0–61.5 GHz band may operate with average output power levels up to 40 dBm and peak output power levels up to 43 dBm, while all other FDS devices (including those being used for SRIMS) are limited to a maximum transmitter conducted output power not to exceed –10 dBm and a maximum EIRP level not to exceed 10 dBm.

When it first adopted § 15.255 in 1995, the Commission stated that its intent was to foster the potential of the 60 GHz band ''for allowing the development of short-range wireless radio systems with communications capabilities approaching those . . . achievable only with coaxial and optical fiber cable.'' When it finalized the rule by adopting a spectrum etiquette three years later, it also included a provision that permitted fixed FDS operation in the band.

In 2016, the Commission further expanded unlicensed device use in the

band to permit limited mobile radar operations and to extend the use of fixed field disturbance sensors to the 64–71 GHz band. At that time, the Commission recognized that wireless innovation included the development of gesture-recognition technology using short-range radars that would allow users to interact with devices without needing to touch them. It thus decided to permit SRIMS radars while also noting that the record before it was insufficient to allow for the unfettered operation of mobile radars in the band. Specifically, the Commission's decision permitted the ''narrow application of mobile radars for short-range interactive motion sensing'' at reduced power levels to ensure that they would successfully co-exist with co-channel communications devices already permitted to operate in the band. While the Commission did not adopt a specific definition for SRIMS, in permitting narrow use of short-range mobile radars it discussed the work of Google LLC (Google) in developing its ''Soli'' sensor technology, which envisioned that smartphones and other personal devices would be able to sense hand gestures when a user is located at a very short distance from the device to perform functions such as controlling web pages or answering phone calls. Furthermore, while the Commission specifically rejected comments calling on it to completely eliminate restrictions on FDS use, it also stated that it might consider allowing higher power levels in the future after it had acquired more experience with the devices it was permitting at that time.

Since the 2016 decision, there has been continued interest in developing mobile radar applications that use the 60 GHz band. To date, the Commission's Office of Engineering and Technology (OET) has granted focused waivers of the rules to support discrete applications. First, Google requested a waiver of the emission limits to allow Soli radar devices to operate at a higher output power level than what had been authorized in the rulemaking, arguing that it had determined that higher power levels were necessary for the radar sensor to provide sufficient resolution to engage in effective interactions. In its 2018 order granting that waiver, which was limited to use of the specific Soli sensor described in Google's request, OET found that allowing Google Soli sensors to operate at the requested power levels would not materially change the operating environment in the 57–64 GHz band from the perspective of the other users in the band. Specifically, it determined that the higher-power Google Soli device would be able to cooperatively share this spectrum with all users. The waiver permitted Google to deploy its Soli sensor technology at 10 dBm peak transmitter conducted output power, 13 dBm peak EIRP level, and 13 dBm/MHz power spectral density, with a maximum 10% duty cycle in any 33 milliseconds (ms) interval. This represented a lesser peak power limit than Google had originally sought, as it had revised its request following discussions with other parties who had interests in using the band for unlicensed operations, such as Facebook, in an effort to facilitate coexistence between unlicensed users in the band.

Recently, OET granted waivers to several parties to permit the operation of vehicle cabin-mounted radars as well as health-care related and other applications in the 57–64 GHz range at the same power levels as those granted to Google in 2018. These narrowly tailored waivers support an especially compelling public interest—using radar technology to monitor for children left in dangerous, hot cars and to trigger alerts that could save lives. While radars operating under these waivers must be installed within the vehicle cabin and have the primary function of preventing children from inadvertently being left unattended in rear car seats, they are also expected to provide additional passenger safety and theft prevention benefits. In addition, OET granted a waiver to Leica Geosystems AG in July 2020 that allows a limited number of radars to operate in the 60–64 GHz band on specialized unmanned aircraft for the specific purpose of avoiding collisions with structures, supporting wires, or other fixed objects during the visual inspection of structures.

Applications such as the use of in-cabin automotive radars represent one of the many uses that parties have identified as being well suited for development in the 57–71 GHz band if the § 15.255 rules were amended to permit expanded mobile radar use. The Commission has received additional waiver requests asking for permission, for example, to install a radar on the exterior of a vehicle to enable closure of a door by the detection of foot movement or hand gestures; to operate 60 GHz radars in robotic lawn mowers, or in personal safety wall-mount devices to detect changes in a person's gait or a fall, and in 3D imaging equipment in healthcare environments. In general, these requests have been consistent with the same technical parameters as the waiver granted to Google and are represented to occupy the same ''spectrum footprint'' as the Soli device. The increased interest in use of the band and accompanying breadth of potential applications that parties have identified is a relatively recent development, attributable at least in part, the Commission believes, to the availability of mass-produced chipsets that are capable of operating in the band, as well as the prospect of marketing and operating these mobile radar devices on a broad international scale.

To that end, the Commission notes that operation at higher power than specified in the Commission's rules has been allowed in Europe under general rules for short-range devices. A European Telecommunications Standards Institute (ETSI) standard, which has been in effect since 2014, permits short-range devices to operate in a portion of the 57–71 GHz band at power levels that exceed those for FDS—including those operating as SRIMS—under § 15.255 of the Commission's rules. Specifically, ETSI Standard EN 305 550 permits operation of short-range devices in the 57–64 GHz band at up to 20 dBm mean EIRP, while § 15.255(c)(3) presently specifies that the peak EIRP level for FDS devices shall not exceed 10 dBm. ETSI EN 305 550 also permits a maximum transmitter output power of 10 dBm, which is 20 dB greater than the level that § 15.255(c)(3) permits in this band. There are some additional differences between the US and European approaches. For example, the ETSI power limits are based on average measurements, whereas the Commission's limits are based on peak power measurements. In addition, ETSI EN 305 550 also requires short-range devices in the 57–64 GHz band to comply with a power spectral density (PSD) limit of 13 dBm/MHz, which the Commission's rules do not include. Finally, unlike the U.S, ETSI does not have a separate provision that allows for higher EIRP levels of up to 40 dBm for FDS in the 61.0–61.5 GHz band, nor does it provide for operation in the 64–71 GHz band.

The protocols for wireless systems operating in the 60 GHz band within the U.S. have been established by the Institute of Electrical and Electronics Engineers (IEEE) 802.11 Standards Committee. These protocols are often referred to as ''WiGig,'' named for the former Wireless Gigabit Alliance which advocated for their development. The current IEEE 802.11ad standard allows for channel sizes of up to 2.16 gigahertz in the 60 GHz band, which support a data rate of up to 8 gigabits per second and permits a total of six channels in the 57–71 GHz band available in the United States. Furthermore, there are

IEEE 802.11 working groups with ongoing activities to define the channel access protocols to enable the same 60 GHz system transmitting communication signals to transmit radar signals.

The ongoing interest in expanding the scope of permissible unlicensed operations in the 60 GHz band has prompted interested parties to form a 60 GHz Coexistence Study Group that has been looking into ways to accommodate both unlicensed communications device and FDS operations in the band. This group, which has attracted the active participation of many key members of the industry and meets on a regular basis, operates independently of the Commission. Members of this group, however, have submitted comments and *ex parte* filings in conjunction with many of the recent waiver proceedings. In general, these submissions have documented the parties' interest in 60 GHz unlicensed operations and have encouraged us to initiate a rulemaking proceeding to review § 15.255 of the Commission's rules with a goal of putting into place a new framework to promote further innovation in the 60 GHz band by both unlicensed communications and FDS operations.

Finally, the 2020 panel of the FCC's Technological Advisory Council (TAC) took notice of the 60 GHz Coexistence Study Group when its Future of Unlicensed Operations working group examined ways to improve regulations for the 60 GHz band. As part of the TAC's January 14, 2021 meeting, the working group recommended that the Commission initiate a rulemaking proceeding to examine the 60 GHz rules in § 15.255 to address issues raised by the numerous waiver requests that had been filed.

Discussion. The Commission believes that there are significant benefits in initiating this rulemaking proceeding, and the Commission agrees with the TAC and other parties that have urged us to comprehensively evaluate unlicensed operations under § 15.255 of the Commission's rules. The Commission realizes that past individual waivers have served as an important ''relief valve'' that allow for unique types of operations that have important public interest benefits and that do not result in harmful interference to incumbent licensed users or jeopardize coexistence with other unlicensed users but do not comply with the Commission's rules. However, they are an inappropriate mechanism for providing the type of broad-based relief that the Commission considers here. Together, the overwhelming interest in FDS operations in the 60 GHz band, the breadth of deployments that parties have identified, and the opportunities for innovation that will be made possible by the availability of relatively inexpensive application-agnostic FDS-capable chipsets make the Commission's initiation of a rulemaking proceeding both timely and appropriate. In recognition that unencumbered unlicensed operation has proven to be an especially powerful engine for innovation and economic growth, the Commission's proposals are designed to expand the opportunities for unlicensed FDS operations in the band to the greatest extent possible. At the same time, the Commission's proposals are also designed to provide assurance that the unlicensed communications devices that have been permitted to use the band since it was first made available for unlicensed operations will be able to coexist with these new unlicensed operations. And, in all cases, the Commission's proposals remain true to the bedrock principle that unlicensed devices, regardless of type, must not cause harmful interference to authorized users of the band.

In this NPRM, the Commission proposes targeted changes to § 15.255 of the Commission's rules to expand unlicensed FDS device operations in the 60 GHz band. First, the Commission proposes that all FDS devices that limit their operating frequencies to the 57–64 GHz portion of the band would be permitted to transmit at a maximum of 20 dBm average EIRP, 13 dBm/MHz average EIRP power spectral density, and 10 dBm transmitter conducted output power, along with a maximum 10% duty cycle restriction within any 33 ms interval. FDS devices will be able to continue to operate across the entire 57–71 GHz band at the 10 dBm EIRP and –10 dBm conducted output power limits specified in the Commission's existing rules. By streamlining the Commission's rules in this manner, the Commission would no longer need the special provisions for short-range interactive motion-sensing mobile radars (*i.e.* SRIMS) that are contained in the Commission's existing rules. Second, the Commission also proposes to retain and potentially to expand on the provision of § 15.255(c)(2) allowing fixed FDS devices that contain their operating bandwidth to the 61.0–61.5 GHz band to transmit at 40 dBm average EIRP and 43 dBm peak EIRP. Finally, the Commission seeks comment on methods to enhance coexistence (*e.g.,* listen-before-talk or other spectrum sensing/contention avoidance capabilities) that could be used to allow the same power level for FDS devices as is currently permitted for 60 GHz communication devices (up to 40 dBm EIRP) across the entire 57–71 GHz band. The Commission is not proposing any rule revisions for existing unlicensed communication devices such as WiGig WLAN or fixed point-to-point wireless links that currently operate in the 57–71 GHz band. However, the Commission seek comment on whether there are particular provisions that the Commission is proposing for FDS operation, such as an antenna gain limit instead of a conducted power limit and requiring use of a spectrum sensing mechanism, that should be more broadly applied to all Part 15 devices operating in the 57–71 GHz band.

The Commission notes that the TAC's Future of Unlicensed Operations working group suggested the Commission seek comment on whether the rules should allow greater radiated power for radar applications, if the parameters of the Google Soli waiver should be incorporated into the rules, and whether there are changes to the conditions and technical requirements set forth in the recent waivers that would improve sharing with communications applications. It further suggested that the Commission ask whether the use of a contention-based protocol should be required, and whether 60 GHz band unlicensed radar applications should be allowed to use the same power levels as communications applications in the band if they incorporate listen-before-talk procedures. The Commission invites commenters to address these specific questions.

As an initial matter, given that the Commission refers to both FDS and radars extensively throughout this document, the Commission addresses the relationship between the two terms. Field disturbance sensors broadly include radar operations. Although § 15.3(l) of the Commission's rules provides a definition for ''field disturbance sensor,'' it does not provide a definition for ''radar,'' and instead parties must look to the radar definition contained in § 2.1 of the Commission's rules. The Commission seeks comment on whether the rules related to ''field disturbance sensors'' in § 15.255 are sufficiently broad and flexible to accommodate the class(es) of devices that parties anticipate will be developed to operate in the 57–71 GHz band. The Commission also seeks comment on whether the Commission should modify the definitions contained in Part 15 of the Commission's rules to provide greater clarity about the relationship between FDS and radars and, if so, how? Commenters that support modifying the

existing Part 15 definitions should also address whether such modifications would require adjustments elsewhere in the rules.

As noted above, a number of parties have been granted waiver of certain provisions of § 15.255 to permit operation of innovative radar devices in the 60 GHz band. To the extent the Commission modifies its rules in this proceeding to expand unlicensed FDS device operations in the 60 GHz band, the Commission expects that all future 60 GHz FDS operations would be conducted subject to the Commission's modified rules. Accordingly, the Commission proposes that if the Commission adopts such modifications to the Commission's rules in this proceeding, the previously granted 60 GHz FDS waivers would be terminated and FDS device manufacturers would be expected to conform their operations to the Commission's rules as revised. The Commission seeks comment on this proposal.

The Commission first proposes to modify § 15.255 of the Commission's rules to afford greater opportunities for fixed and mobile FDS devices operating in the 57–64 GHz portion of the 60 GHz band. The extensive analysis that has accompanied the multiple waiver requests that have been submitted to the Commission, the widespread consumer use of Google's Soli-equipped devices without reported cases of harmful interference and the ongoing efforts of the industry and standards groups to identify model coexistence practices for unlicensed users gives us confidence that there is now sufficient information for us to build a record to expand unlicensed mobile radar use beyond the toehold the Commission first provided in 2016 and the narrow waivers that have been issued to date. The Commission's baseline proposals draw from the technical and operating conditions incorporated into the waivers granted to Google for its Soli device and to automobile manufacturers and suppliers for in-cabin radars to detect children left in cars, with additional modifications to account for harmonization with international provisions governing operation in the band.

As discussed below, the Commission proposes to: Focus device operation to the 57–64 GHz portion of the 60 GHz band; allow operations at higher power levels than were permitted in the waivers but consistent with the well-established ETSI standards; and require a duty cycle that is consistent with what was established in the Google waiver, with the possibility of mandating a minimum off-time between cycles.

Based on the Commission's review of the multiple waiver requests that pertain to FDS use of the 60 GHz band, parties designing and manufacturing radars to operate in the 60 GHz band have proposed to restrict their spectrum usage to frequencies below 64 GHz (constituting the 60–64 GHz or 57–64 GHz band segments, depending on the filing), although § 15.255 permits operation across the 57–71 GHz band for fixed FDS and SRIMS devices such as the Google Soli. The Commission surmises that the requests seek to limit operation to the lower portion of the 57–71 GHz band to align operations and devices with international standards such as the European ETSI Harmonized Standard EN 305 550 that restrict short-range devices, *e.g.,* radars, to the 57–64 GHz band. The Commission seeks comment on this assumption.

The Commission notes that a proposal has been submitted to IEEE 802.11 to define a channel access protocol to enable the same 60 GHz systems to transmit signals that can be used both for communications and radar purposes to be decoded by a similar system at the receiving end. Equipment designs for 60 GHz transmitters are thus considering radar transmissions alongside communication transmissions in the same transmitter or chip. While the IEEE efforts in this area may be considering the entire 57–71 GHz band, the Commission proposes to limit operation of FDS devices operating under the Commission's proposed higher power limits (20 dBm EIRP) to the 57–64 GHz band. As discussed above, limiting the Commission's proposal in this way provides for devices that are consistent with the international standards, which only specify FDS operation in the 57–64 GHz band. The Commission seeks comment on this proposal. Would limiting operation of higher power FDS devices to the 57–64 GHz band benefit 60 GHz WLAN systems operating in close proximity to FDS devices by leaving the 64–71 GHz band clear of higher power FDS operations? The Commission seeks comment on whether, alternatively, the Commission should allow the proposed FDS operation across all of the 57–71 GHz band or some other segment of the band. If the Commission were to allow the proposed FDS operation across the entire 57–71 GHz frequency range under the proposed requirements discussed below—which include a duty cycle limit—should the Commission remove the current provision that permits operation in this band at 10 dBm EIRP with no duty cycle limit? Should the Commission modify the Commission's rules in any other respect? The Commission also seeks comment on the benefits or costs of these proposed changes with respect to 60 GHz authorized users. Parties that oppose these proposed rules should cite specific harms that they believe would result from changing the rules.

EIRP Limits. The current rules permit FDS devices to operate at a maximum 10 dBm EIRP. All of the waiver requests the Commission received requested a maximum of 13 dBm EIRP to provide greater accuracy and finer resolution imaging. Subsequent waiver requests to Google's waiver described the intended target detection to be either in the sub-millimeter range such as the breathing patterns of a child in a car seat, or as in the case of Leica Geosystems AG, thin cables as small as 2.5 mm in diameter; thus, requesters argue that 60 GHz FDS devices need higher power than specified in the rules, because the existing power levels do not allow the devices to provide the necessary accuracy in detection of small-size targets due to poor signal-to-noise ratio.

The Commission proposes to allow FDS devices to operate at no more than 20 dBm average EIRP. This proposed EIRP limit is higher than the level requested in the multiple waivers that the Commission received; however, it is consistent with ETSI EN 305 550. The Commission believes this EIRP level will promote additional growth for new FDS applications beyond those anticipated to be deployed under the Commission's issued and pending waiver requests. The Commission also believes that harmonization with other regions will likely increase efficiency for American manufacturers by reducing design and manufacturing costs. The Commission further believes that this EIRP limit will not cause harmful interference to authorized services in the band. These radars will operate at a comparatively much lower EIRP level than what is already permitted for communication devices (indoors and outdoors) in the same frequency band. Communication devices such as 60 GHz WLAN devices can operate at up to 40 dBm EIRP, as compared to the 20 dBm EIRP limit that the Commission is proposing for radars. The Commission notes that a WLAN device may already have to operate in the presence of signals from neighboring WLAN devices and other Part 15 devices operating at similar power levels; thus the proposed lower EIRP limit for FDS devices should have little or no effect on the operational environment that WLAN devices can expect under the Commission's rules. The Commission also observes that 60 GHz WLAN

devices have operated at this EIRP limit (*i.e.,* 40 dBm average/43 dBm peak) for several years without causing harmful interference to other authorized services, such as the Passive EESS operating at 57–59.3 GHz. In addition, the IEEE 802.11 standards group's activity to define channel access protocols to allow transmission of radar signals alongside communication signals may allow coexistence of both signals in the 60 GHz band. The Commission seeks comment on the proposed EIRP level for FDS devices and on the Commission's tentative interference assessment. The Commission also seeks comment on the state of standards development — specifically, with respect to coexistence issues between radar signals and communications signals. Should the Commission specify any coexistence measures or requirements, such as listen-before-talk in its rules? Does the fact that many radars are mobile mean that they will not be used in close proximity to communication devices for extended periods of time, thus limiting any potential for causing interference to short durations? Further, the Commission seeks comment on the benefits or costs of the proposed change to the EIRP limit with respect to 60 GHz authorized users. How would this change, if adopted, benefit stakeholders, consumers and others? Parties that oppose these proposed rules should: Cite specific harms that they believe will result from changing the rules in the manner proposed, estimate the costs of such potential harms, and specify under what parameters they believe radar systems can coexist with communications systems in the band.

Because 60 GHz FDS devices will need to coexist with 60 GHz communications devices, the Commission also seeks comment on the state of development in the 60 GHz communications device ecosystem. What is the current state of deployment of 60 GHz communications systems? What use cases are supported by 60 GHz communications systems today, and what use cases are contemplated for these systems in the future? Do 60 GHz communications systems generally take advantage of the higher EIRP limits permitted under the Commission's rules? Facebook, Intel, and Qualcomm assert that the 60 GHz band will be used by unlicensed devices for latency-sensitive augmented reality/virtual reality/extended reality (AR/VR/XR) applications. Is this likely to be a widely-deployed use case in the 60 GHz band? Do AR/VR/XR applications present distinct interference scenarios or raise other considerations compared to other 60 GHz WLAN applications? Do 60 GHz unlicensed communications systems operate throughout the entirety of the 60 GHz band? Could these systems operate effectively in a subsection of the overall band, for example, the 64–71 GHz band segment?

Transmitter Conducted Output Power Limit. The rules currently permit FDS devices to operate at a maximum –10 dBm transmitter conducted output power, whereas 60 GHz WLAN devices are allowed up to 27 dBm. The Commission proposes to allow FDS devices to operate at a maximum 10 dBm conducted output power, consistent with the waivers the Commission has already granted in the band. The Commission notes that the ETSI standard specifies the conducted output power as a mean (average) limit, rather than a peak limit as the Commission's rules do. The Commission seeks input on whether the Commission should consider average transmitter conducted output power limit and what impact this would have on the different types of FDS devices (*e.g.,* FMCW, pulse, etc.). On the other hand, the Commission notes that for 60 GHz transmitters, including communications and radar devices, that are implemented at the chip level, access to the transmitter output port may not be available, rendering a demonstration of compliance to this requirement burdensome. The Commission seeks input on whether this requirement is necessary in view of the technological evolution of such system-on-chip devices. A 10 dBm transmitter conducted output power limit along with a 20 dBm EIRP limit implies a limit on transmit antenna gain. The Commission inquires as to whether the transmitter conducted output power limit instead should be replaced by an antenna gain limit. If so, what limit would be appropriate? Should an antenna gain limit be applied to all 60 GHz transmitters, including 60 GHz communication devices, since these devices also have transmitters implemented at the chip level, and thus would encounter the same measurement difficulties? The Commission also seeks comment on whether a transmitter conducted output limit is necessary for 60 GHz transmitters, including communications and radar devices. The Commission seeks input on this issue in order to develop a comprehensive record. The Commission also seeks comment on the benefits or costs of the proposed change to the transmitter conducted output power with respect to 60 GHz authorized users. Proponents of such a change should provide specific details regarding measurement difficulties than might be encountered for system-on-a-chip devices as well as details on what maximum antenna gain they believe should be specified and whether there are circumstances under which that gain can be exceeded (*e.g.,* with a corresponding EIRP reduction).

Power Spectral Density Limit. The existing rules do not restrict the power spectral density for 60 GHz devices. The Commission proposes to require a 13 dBm/MHz EIRP power spectral density on FDS devices, to be consistent with the ETSI limit. This is the same restriction the Commission placed on Google and other parties operating FDS devices pursuant to Commission issued waivers. The Commission seeks comment on the proposed power spectral density limit. Is there a need for a power spectral density limit, and if so, what is the appropriate limit and for which types of devices should it apply? For example, would a power spectral density limit be necessary for FDS devices using frequency-modulated continuous wave (FMCW), or pulse/impulse transmissions? Although the Commission is mindful of harmonizing the technical rules that the Commission adopts with the existing ETSI standards, the Commission seeks input and technical analyses on the utility of this proposed requirement. FMCW sensors generally modulate their transmission over a frequency band in order to obtain the necessary target resolution. At any given time, FMCW sensor emissions are limited to a small portion of the spectrum. As such, implementing a PSD limit appears to be an appropriate measure for spectrum sharing for these types of sensors. The Commission seeks comment on whether a PSD limit alone is a sufficient power limit to facilitate sharing between field disturbance sensors and communication devices. Are there other FDS modulation techniques that would benefit from a power spectral density limit? The Commission also seeks comment on the benefits or costs of the proposed power spectral density limit for FDS devices with respect to 60 GHz authorized users. If the Commission does not adopt a power spectral density limit, what are the ramifications if devices are permitted to operate with all of their energy concentrated in a narrow bandwidth? Parties that oppose these proposed rules should cite specific harms that they believe would result by imposing a power spectral density requirement.

The Commission notes that the EIRP, transmitter conducted output power, and power density limits proposed here

are consistent with those stipulated by the ETSI standard EN 305 550. This standard has been in existence since 2014, thus these limits have been tested and deployed in other geographic regions with similar spectrum allocations. In fact, ETSI released an updated draft of this standard in 2017 and did not recommend changes to the limits. Thus, it appears that these proposed power levels have been successful in providing an environment that supports robust sharing of the 60 GHz spectrum among various users as the Commission is proposing to allow here. The Commission seeks comment on this view. The Commission also seeks input on the development status of the draft 2017 ETSI EN 305 550 Standard with respect to the technical parameters the Commission is proposing herein. The Commission understands that ETSI is undertaking a major revision of EN 305 550 to address receiver performance parameters, which the 2014 Harmonized version did not address. The Commission seek comment on the status of this revision and what changes to the specification are anticipated. In light of this ongoing revision, are changes to the Commission's proposed rules warranted? To develop a comprehensive record, the Commission seeks input on current or planned standards, both domestic and international, regarding operation of FDS devices in the 57–71 GHz band, or any subset frequency band thereof. In addition, because radar resolution is generally dependent on bandwidth, the Commission seeks comment on whether the proposed rules will provide the sufficient resolution over the ranges needed for the applications envisioned for radars in the 60 GHz band.

Peak vs. Average Power Limits. The Commission notes that, except for fixed FDS devices that contain their operating bandwidth within the 61.0–61.5 GHz band, the existing rules for FDS devices do not specify an average power limit, but instead only a peak or maximum power limit, unlike the power limits for 60 GHz communications devices, where the Commission specifies both an average EIRP and a peak EIRP of 3 dB above the average limit. The Commission observes that 60 GHz FDS and radar devices will mostly use constant-amplitude continuous-wave (CW), frequency-modulated continuous wave (FMCW), or pulse/impulse transmissions. If the limits are applied only during active transmission (*i.e.,* only over the chirp or pulse duration), then the peak and the average signals will be equivalent. The Commission further notes that by specifying the limits only in terms of average power, potential measurement instrument desensitization phenomena can be avoided. The Commission proposes to define the power limits for FDS/radar devices in terms of average power and seek comment on the benefits of such a measurement. Are there consequences to specifying average power measurements rather than peak with respect to the potential to cause harmful interference to authorized users, or for unlicensed radar systems to coexist with unlicensed communications systems? Those who believe that such a change might result in harmful interference should estimate the costs of such interference. Would this change impact passive EESS users in the 57–59.3 GHz band? Are there are other possible FDS/radar modulation techniques that would make requiring a peak power limit necessary?

The existing rules do not place a duty cycle restriction on 60 GHz devices. Similarly, the ETSI EN 305 550 standard does not stipulate a duty cycle limit for 60 GHz short-range devices; however, the standard does specify requirements for 60 GHz receivers to ensure that they can adequately handle interferer signals. The Commission imposed a 10% duty cycle limit in the *Google Waiver Order* and subsequent waivers for 60 GHz FDS devices operating under higher emission limits than permitted in the rules. This 10% duty cycle is based on a maximum 3.3 ms transmission time in every 33 ms interval and was derived from Google's 2018 final agreement with stakeholders from the WLAN communications industry whose technology operates in the 60 GHz spectrum. The Commission proposes to require the same duty cycle restriction as that imposed in the multiple waivers.

However, the Commission notes that in some of the waiver requests, parties asked for a longer transmission time frame. The Commission further notes certain parties recommend modifying the duty cycle restriction adopted in the waivers to read that ''any radar off-time period between two successive radar pulses that is less than 2 ms shall be considered 'on time' for purposes of computing the duty cycle.'' These parties express concern that the duty cycle requirement in the waivers will not promote coexistence with communications applications, including AR/VR/XR communication devices which require very high data throughput and very low latency. They point out that the 10% duty cycle requirement could lead to certain radars transmitting very short bursts (in micro-second durations) followed by similarly short silent periods (also in the micro-second durations) during the entire total 33 ms interval. This would result in interspersed, non-contiguous micro-second short silent intervals during which 60 GHz AR/VR communication devices may have difficulty accessing the spectrum due to the briefness of the radars' quiet intervals; yet, when added together, the total amount of transmission time and silent intervals would comply with the ''10% on, 90% off'' definition of a 10% duty cycle.

On the other hand, other parties indicate that ''regulatory guarantees of such latency targets would substantially degrade performance of FMCW radars, which generally need to transmit frequent chirps (to prevent velocity aliasing) and span a sufficient burst time to enable good velocity resolution.'' These parties argue that a duty cycle rule restricting radars to ''guarantee that at least 99% of WiGig packets experience on-air latency of no more than a few milliseconds'' would be unnecessary due to ''radars' low transmission power, low potential to generate interference, and antenna directionality, as well as propagation loss in the 60 GHz band.'' A regulatory latency target will have a similar impact on pulse radars as well, as the radar's observable maximum velocity and velocity resolution both depend on the pulse repetition frequency. As such, should duty cycle be defined differently for radar systems with different modulation techniques (FMCW, pulse, etc.) operating on different time scales? On the other hand, in view of these apparent limitations with respect to maximum velocity and velocity resolution, is duty cycle a suitable parameter for regulation? Can limiting peak and average power within a defined band be a better approach than specifying a duty cycle? If regulating the duty cycle is necessary, then how should it be defined? The Commission seeks comment and technical input on appropriate parameters for regulation including definition/characterization of the duty cycle with respect to radar devices. The Commission seeks input on this issue to maximize the efficiency of both communications and radar operations without unduly degrading the operating environment for unlicensed users of the band or causing harmful interference to authorized users in the band. The Commission also seeks comment on whether radar signals could mimic the spectrum access protocols of communications devices to appear like any other communication signal thereby making a duty cycle restriction unnecessary. The

Commission seeks comment on whether the recent activities in the IEEE standards group examining channel access protocols that would enable the same 60 GHz system transmitting communication signals to transmit radar signals address this issue. Commenters should provide technical detail, studies and analyses supporting their position on how a duty cycle requirement for FDS devices should be specified.

The Commission notes that the 60 GHz Co-existence Study Group's activities have been geared toward developing ''a consensus approach'' to a framework for a potential Commission rulemaking, with discussions concerning duty cycles; transmission on- and off-times; operating bandwidth and channelization (*e.g.,* radar implementations with 2-gigahertz, 4-gigahertz, 7-gigahertz-bandwidth); contention-based protocols; transmit power; and antenna gain.'' Although representatives from the 60CSG recently informed us that the group has yet to achieve consensus on a recommended regulatory approach to accomplish coexistence among the diverse operations in the 60 GHz band, they also described several potential ''frameworks'' for further unlicensed development in this frequency range. These include establishing a single rule for radar operations in the 57–64 GHz portion of the 60 GHz band, establishing a rule based on average power and/or average PSD limits that draws from the ETSI EN 305 550 standard, taking a channelization approach to radars in the 60 GHz band, and amending the rules to reflect different categories of technologies that operate in the 60 GHz band, such as allowing for different operating parameters when operating in a vehicle, indoors, or outdoors, or between implementations that are fixed, mobile, or portable. The Commission seeks comment on the 60 GHz CSG filing. What are the technical trade-offs and cost/benefits for each framework? What parts of these four frameworks can the Commission incorporate into the Commission's final rules to optimize the benefits and minimize the costs to all authorized 60 GHz users, and help us achieve the Commission's objective of fostering a greater variety of unlicensed uses in the 60 GHz band? The Commission also seeks input on the work results of any other coexistence standards activities (international and domestic) and/or cooperative works between communications and FDS study groups that may have taken place, and how such work may inform the Commission's proposals to expand unlicensed use of the band.

Because the Commission is proposing to permit fixed and mobile radars to operate in the 60 GHz band, the Commission believes it is no longer necessary to qualify an application as SRIMS to operate as a mobile radar under § 15.255. The Commission therefore proposes to remove this designation from the rules and replace it with the general designation of FDS devices for both fixed and mobile radars. As indicated, when adopting the rule for SRIMS, the Commission stated that it intended it to be a narrow application of mobile radar use, while continuing to prohibit general mobile radar use in § 15.255. As such, the Commission did not adopt a definition for SRIMS. Over the last few years, there has been much confusion on which 60 GHz mobile and fixed radar applications should qualify under the SRIMS designation. The Commission also requested input in response to the multiple 60 GHz waiver requests but was not able to make a bright-line determination for certain applications. The Commission seeks comment on the proposal to remove the SRIMS exception from § 15.255 and replace it with general rules covering all FDS devices. The Commission also seeks comment on the benefits or costs of this proposal with respect to 60 GHz authorized users. Parties that oppose removing the SRIMS designation from the rules should cite specific harms that they believe would result from making this change to the rules.

The Commission next addresses § 15.255(c)(2) of its rules, which permits a fixed FDS device to operate at up to 40 dBm average EIRP and at up to 43 dBm peak EIRP in the 61.0–61.5 GHz band segment. Under this rule, a fixed FDS device's occupied bandwidth must be fully contained within the 500-megahertz bandwidth of the 61.0–61.5 GHz band; and it must attenuate its signals outside the 61.0–61.5 GHz band, but still within the 57–71 GHz band, to less than 10 dBm average EIRP and 13 dBm peak EIRP. The Commission believes that this rule is valuable insofar that it permits the operation of fixed FDS devices at power levels as high as communication devices, albeit restricted to a more narrow operating bandwidth, without being restricted to a specific duty cycle limit. As such, the Commission proposes to retain § 15.255(c)(2) but also seeks comment on whether the Commission should expand this provision to apply to both fixed and mobile FDS applications. The Commission seeks comment on how useful this 500-megahertz bandwidth provision has been in practice in facilitating FDS device deployment, given that radars typically achieve better resolution with a wider bandwidth. What FDS applications currently are being enabled using the higher power levels permitted in the 61.0–61.5 GHz band? Could the Commission expect that expanding § 15.255(c)(2) would result in new mobile FDS applications, and if so would they perform functions that otherwise would not be possible under the existing rules? How would expanding the rule affect the spectrum environment for all users of the band? What costs and benefits would be associated with such an action? In particular, the Commission seeks comment and technical analyses on these issues to develop a comprehensive record.

Section 15.255(c)(2) requires the average power of any emission outside of the 61.0–61.5 GHz band, measured during the transmit interval, to be less than or equal to 10 dBm, and similarly the peak power of any emission to be less than or equal to 13 dBm. Because no measurement bandwidth is currently specified in the rule, the Commission seeks comment on whether this requirement is sufficiently specific. Should these limits be specified in terms of power spectral density (PSD)? If so, what are the required peak and average power densities outside of the 61.0–61.5 GHz band? The reference bandwidth that the Commission often uses for specification of the spurious domain emission levels for frequency bands above 1 GHz is 1 megahertz. The Commission seeks comment on the appropriate reference bandwidth for PSD for emission outside of the 61.0–61.5 GHz band. Are any other additional requirements necessary?

To the extent that the Commission retains provisions in § 15.255 that specifically permit fixed FDS operations, the Commission seeks comment on how the Commission should interpret ''fixed'' and whether the Commission should incorporate a specific definition for the term into the Commission's Part 15 rules. When OET granted the automotive waivers, it noted that the Commission did not specifically address whether the rule permits something that is inherently mobile (such as an automobile) to be treated as fixed in certain circumstances, and left any determination of what constitutes ''fixed'' and ''mobile'' operation under the rule for separate consideration. A review of the 1998 Report and Order that first permitted fixed FDS use in the band would suggest that the Commission was anticipating a narrow set of applications that would be used in industrial settings where the

equipment would rarely if ever be moved. However, in light of the wide range of potential FDS applications that now have been identified for the 60 GHz band and the Commission's general inclination to provide as expansive an opportunity for unlicensed operations in a particular band as is practical, the Commission tentatively concludes that a broader view is appropriate. The Commission tentatively concludes that the Commission should interpret fixed FDS operations as those instances where an FDS device is stationary and is operating at a discrete location for an indefinite—*i.e.,* more than mere transitory—period. The Commission envisions this interpretation would allow for a device that is used in a household and easily moved from room to room to operate in different parts of the residence, but that an automotive-mounted radar that operates when the car is stopped while the ignition is engaged would be too transitory to qualify. The Commission seeks comment on this proposal. Does it provide a sufficient bright-line rule for device operation? Will it provide other unlicensed and authorized users in the 60 GHz band with sufficient confidence that they will be able to identify and resolve any degradation of the operational environment caused by these fixed users? Are there other interpretations that are more appropriate for defining fixed FDS operations?

The Commission's third area of discussion relates to whether the Commission could permit FDS devices to operate at a higher power throughout the entire 57–71 GHz band. In its recommendation, the TAC suggests that the Commission explores the possibility of allowing radars that incorporate a sensing technology such as listen-before-talk (LBT) to operate at the same emission limits as WLAN devices in the band, *i.e.,* 40 dBm EIRP and 27 dBm transmitter conducted output power. The Commission seeks input regarding the effect such higher power levels would have on authorized users who are entitled to interference protection, as well as how those power levels would affect the ability of unlicensed radar systems to coexist with unlicensed communications systems. Are these EIRP and transmitter conducted output power levels appropriate for radar applications, given the implied high antenna gain/directivity? What antenna gain do radars need in various applications? Are mobile radar applications limited by power consumption such that they would not be able to leverage these higher emission limits? With spectrum sensing capabilities, would a duty cycle restriction be necessary? The Commission seeks input and feedback as well as recommendations on these issues. Commenters should provide technical details and/or studies to show that it is practical for radars to operate at up to 40 dBm EIRP without causing harmful interference to existing authorized services in the band. The Commission notes that the *2021 TAC Recommendation* only mentions the listen-before-talk technique. Are there other spectrum contention avoidance techniques that would serve the same purpose and how effective are they? What are the costs and benefits of such techniques? Have there been any completed or ongoing studies regarding coexistence between radars and authorized 60 GHz users and, if so, what are the results and recommendations? Should the same spectrum sensing technique be required for all devices operating in the 57–71 GHz band with the average power limit of 40 dBm EIRP? Have industry standards groups such as the 802.11 Standards Committee considered the use of spectrum sensing techniques for 60 GHz unlicensed devices? Will there be a need to regulate energy detection and observation time for LBT sensing? If so, what are the appropriate limits? Will usage of LBT provide higher aggregate capacity? If so, does it justify the higher complexity necessary to support LBT? The Commission solicits input on these issues to develop a comprehensive record on these matters.

The Commission does not propose to alter the existing restrictions relating to the use of 60 GHz band unlicensed devices on board aircraft which are contained in § 15.255(b) of its rules, but the Commission nevertheless seeks comment as to whether the Commission should expand the situations where such use is permissible. Currently, such operation is limited to when the aircraft is on the ground, and, for airborne use, only in closed exclusive communication networks within the aircraft. To account for the important interest in protecting passive EESS users that operate in the 57–59.3 GHz band, the rule limits this use to aircraft with a high RF attenuation body (*e.g.,* commercial airliners), and cannot be used in wireless avionics intra-communication applications where external structural sensors or external cameras are mounted on the outside of the aircraft structure.

The Commission does not believe that retaining the existing provisions regarding in-aircraft use of unlicensed devices would hinder the initial successful deployment of new applications and devices under the Commission's proposed rules. Many of the use opportunities that have been identified to date—such as inside and outside vehicles, and in personal safety, medical imaging, home automation, environmental control, and robotic appliances devices, for example—are not dependent on use on board an aircraft. Compliance options also exist for portable electronic devices that may be brought aboard airplanes. These could include, for example, activation of ''airplane mode'' during flight or the use of sensors to disable operations when the device is above a particular height above ground. The Commission seeks comment on this tentative determination.

Currently the Commission has only authorized 60 GHz radars to operate on board aircraft beyond the uses permitted in the rules via two limited situations. Both were in conjunction with waiver grants that carefully evaluated how specific devices would be deployed in well-defined use cases. Leica Geosystems AG may operate a 60–64 GHz radar on an unmanned aircraft, but with very restrictive conditions on the number of deployed devices. The Google Soli radar incorporated into a smartphone (*e.g.,* the Google Pixel) allows control of a smartphone via gestures without touching the phone, and is not intended to be part of the aircraft communication network.

Although the Commission proposes to retain the existing rule, the Commission nevertheless seeks comment on whether the Commission should allow for expanded use of 60 GHz radars on board aircraft and, if so, with what requirements and restrictions. Given that the Commission's fundamental consideration has been and remains how to ensure that passive EESS operations in the 57–59.3 GHz band continue to be protected from harmful interference that could be caused by airborne use of unlicensed 60 GHz devices, could airborne radar use be permitted above 59.3 GHz? The Commission is not aware of any reports of harmful interference being caused by Google Soli devices during airborne use. Could the Commission permit 60 GHz radars to operate on board aircraft for limited uses such as when incorporated into smartphones or similar portable electronic devices that may be carried by air travelers? Would the Commission need to limit such use to the power levels associated with the Google Soli waiver, which operates at lower power levels than those the Commission is proposing for 60 GHz radars? Are there other narrow use cases that the Commission should allow? For

example, could the Commission's rules be modified to allow an aircraft's entertainment system's in-seat display monitors to incorporate radars that could be controlled remotely by air travelers' gestures? Commenters addressing expanded airborne use should provide detailed technical analyses, research, studies, etc. supporting potential recommendations to address whether harmful interference to authorized users in the band would result or if such systems can coexist and under what conditions. Would any adverse effects be anticipated from 60 GHz radars operating on aircraft? Would the risk of harmful interference occurring to passive EESS be minimal from radars in aircraft with high RF attenuation characteristics? What are the cost and benefits of such use?

In addition, the Commission seeks comment on the ramifications of permitting unlicensed 60 GHz radar operation on board aircraft with little or no RF attenuation characteristics, such as unmanned aerial systems (UAS)/drones and light and personal aircraft. The Commission has given a limited waiver to Leica Geosystems AG to operate a radar in the 60–64 GHz band on board a UAS to provide visual inspection of structures in engineering and scientific applications to prevent the UAS from colliding with the structure or other fixed objects that it is surveying. The Commission has also received informal inquiries indicating an interest in deploying unlicensed 60 GHz radar for applications involving, as an example, use on board crop-spraying aircraft. Commenters who support expanding the types of aircraft upon which unlicensed 60 GHz devices could be deployed should address how such use would not undermine the objective of preventing harmful interference to EESS operations in the 57–59.3 GHz portion of the band.

Compliance testing of modulated CW (*e.g.,* FMCW) and pulse/impulse-based radar devices can be complex and typically requires careful consideration to ensure the proper characterization of technical parameters such as transmit bandwidth, output power and unwanted emissions levels in the out-of-band and spurious domains. As such, the Commission seeks comment on methodologies for performing such tests to obtain the data necessary to demonstrate compliance with the specified technical requirements for the types of radars anticipated to operate under § 15.255 rules. For example, should transmission bandwidth be represented only by the chirp or pulse specifications or should it be expressed as a measured occupied bandwidth, 20-dB bandwidth, or other representation? Similarly, should peak power measurements be avoided to eliminate potential for inaccurate amplitude results due to measurement instrumentation desensitization? Measured power levels for radio frequency (RF) pulses that are frequency modulated (chirped) vary as a function of the bandwidth in which the measurement is performed; if chirped pulses cause RF interference, the power levels of the pulses in victim receivers will likewise vary as a function of receiver bandwidth. NTIA Technical Report TR–12–488 provides both heuristic and rigorous derivations of the relationships among chirped pulse parameters and the measured peak and average power levels of chirped pulses as a function of measurement bandwidth. These relationships may be best understood via a single graph (Figure 3) presented in this report. This report supplements NTIA Technical Reports TR–05–420, TR–10–465 and TR–10–466, in which the formula for minimum bandwidth needed for measurement of full peak power in chirped pulses is presented but not derived. The Commission seeks comment on NTIA's technical report and its applicability to measurements of chirped signals.

The Commission proposes to exempt FMCW and other similar swept-frequency radars from the § 15.31(c) requirement to stop the frequency sweep when measuring the relevant technical parameters. Stopping the sweep is physically impractical for most of these types of devices and can result in inaccurate measurements. In addition, the Commission proposes to remove the § 15.255(c)(4) requirement to use an RF detector with a detection bandwidth that encompasses the 57–71 GHz frequency range for performing peak power measurements. The Commission believes that this requirement is superseded by the more recent inclusion of § 15.255(i), which sets out a flexible approach toward measurement that can be adapted more effectively as the technology of devices and test instrumentation evolve. Finally, the Commission proposes to specify that the provision of § 15.35(c) that requires calculating average field strength over a complete pulse train or 100 milliseconds is not applicable to pulsed or burst radars that operate in the 60 GHz band. This measurement requirement was originally designed for low frequency pulse-code modulated devices such as garage door openers and the Commission believes it is not appropriate for high frequency radars. The Commission seeks comment on these proposals.

Initial Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this *Notice of Proposed Rulemaking.*

Initial Paperwork Reduction Act Analysis. This *Notice of Proposed Rulemaking* does not contain potential new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Ex Parte Rules—Permit-But-Disclose. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. Memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments,

memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Additional Information. For additional information on this proceeding, contact Anh T. Wride, *anh.wride@fcc.gov,* (202) 418–0577, Office of Engineering and Technology, Technical Rules Branch; or Thomas Struble at (202) 418–2470 or *Thomas.Struble@fcc.gov,* Office of Engineering and Technology, Office of the Chief Engineer.

Initial Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in the item. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

A. Need for, and Objectives of, the Proposed Rules

The *NPRM* addresses issues raised in multiple waiver requests by various field disturbance sensor (FDS)/radar manufacturers and is partly in response to a recommendation from the Technical Advisory Committee (TAC) that the Commission modify the rules for unlicensed 60 GHz devices in a number of respects. The TAC recommends that the FCC initiates a rulemaking proceeding addressing potential areas of concern in the 60 GHz band by requesting comment and response to the following questions: (1) Should FCC rules allow greater radiated power for radar applications than currently permitted?; (2) Should the parameters for Google Soli, for which other entities have filed ''me-too'' requests, be included in the rules?; (3) What changes to the recent waiver parameters are needed to improve sharing with communications applications?; (4) Should the FCC require 60 GHz communication applications (and radar applications) to use a contention-based protocol?; and (5) Should radar applications that perform listen-before-talk be allowed to use the same power levels as communications applications in this band?

B. Legal Basis

The proposed action is taken pursuant to sections 4(i), 201, 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201, 302a, 303.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[6] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[7]

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The proposed rules pertain to manufacturers of unlicensed communications devices. The appropriate small business size standard is that which the SBA has established for radio and television broadcasting and wireless communications equipment manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[8] Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[9] The SBA has established a small business size standard for this industry of 1,250 employees or less.[10] U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year.[11] Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.[12] Based on this data, we conclude that a majority of manufacturers in this industry are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

Unlicensed 60 GHz devices operating in the 57–71 GHz frequency band are regulated under section 15.255 of the Commission's rules. The proposed rules in this *NPRM* pertain to field disturbance sensors (*i.e.,* radar devices) that may be fixed or mobile. The proposed rules increase the allowable transmitted power levels to promote

[1] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 603(a).

[3] *Id.*

[4] 5 U.S.C. 603(b)(3).

[5] 5 U.S.C. 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''.

[7] 15 U.S.C. 632.

[8] *See* U.S. Census Bureau, *2017 NAICS Definition, ''334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,'' https://www.census.gov/naics/?input=334220&year=2017&details=334220.*

[9] *Id.*

[10] *See* 13 CFR 121.201, NAICS Code 334220.

[11] *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012,* NAICS Code 334220, *https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false.*

[12] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

short-range radar applications without application restriction on operating environments, *i.e.,* they may operate indoors or outdoors, in fixed or mobile applications, and be incorporated into any device, *e.g.,* personal safety, industrial and consumer robotics, home/transportation automation (*e.g.,* autonomous vehicles), environmental control, health care monitoring. Specifically, the *NPRM:* (1) Proposes to permit field disturbance sensors in the 57–64 GHz band to operate with up to 20 dBm average EIRP, 10 dBm transmitter conducted output power, 13 dBm/MHz average EIRP power spectral density and a 10% duty cycle in every 33 millisecond (ms) interval; (2) investigates the potential for mobile FDS devices to operate in the 61.0–61.5 GHz band at the same 40 dBm EIRP at which fixed FDS devices currently are permitted to operate; (3) ask whether the Commission could permit radar devices that incorporate listen-before-talk, spectrum sensing, or other methods of co-existence, to operate across the entire 57–71 GHz band at the same power level (*i.e.,* 40 dBm EIRP) as currently is permitted for 60 GHz communication devices; and (4) ask whether any of the provisions proposed for FDS operation should be more broadly applied to all Part 15 devices operating in the 57–71 GHz band.

Most RF transmitting equipment, including 60 GHz devices, must be authorized through the certification procedure. Certification is an equipment authorization issued by a designated Telecommunication Certification Body (TCB) based on an application and test data submitted by the responsible party (*e.g.,* the manufacturer or importer).[13] Existing FDS devices operating under section 15.255 of the Commission's rules are already subject to the Certification procedure. The *NPRM* does not propose to change the authorization procedure for 60 GHz devices, but it does seek comment on methodologies for performing tests to obtain the data necessary to demonstrate compliance with the technical requirements for the types of radars anticipated to operate under the modified rules. In addition, the *NPRM* proposes to exempt frequency-modulated continuous wave and other swept frequency radars from the section 15.31(c) requirement to stop the frequency sweep when measuring the relevant technical parameters;[14] (2) remove the section 15.255(c)(4) requirement to use an RF detector with a detection bandwidth that encompasses the 57–71 GHz frequency range for performing peak power measurements;[15] and (3) not apply the provision of section 15.35(c) that requires calculating average field strength over a complete pulse train or 100 milliseconds to pulsed or burst radars that operate in the 60 GHz band.[16]

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' [17]

The rule changes proposed in the *NPRM* for higher power to field disturbance sensors and radars would provide greater flexibility to 60 GHz device operations. As these proposed changes provide greater flexibility, the Commission does not believe they will have a significant negative impact on small entities. In fact, the proposed rules could benefit small entities. As operation of 60 GHz devices do not require a license, small entities are able to operate 60 GHz devices without the cost or inconvenience of obtaining a license. In addition, the proposed rules partly align the technical parameters for FDS/radar devices with international standards, which could save cost to small entities who would now be able to avoid having to create region-specific product designs.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses. It is ordered, pursuant to the authority found in sections 4(i), 201, 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201, 302a, 303, and §§ 1.407 and 1.411 of the Commission's rules, 47 CFR 1.407 and 1.411, that this Notice of Proposed Rulemaking *is adopted*, as set forth above.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 2. Section 15.31 is amended by revising paragraph (c) to read as follows:

§ 15.31 Measurement standards.

* * * * *

(c) Except as otherwise indicated in §§ 15.255 and 15.256, for swept frequency equipment, measurements shall be made with the frequency sweep stopped at those frequencies chosen for the measurements to be reported.

* * * * *

■ 3. Section 15.35 is amended by revising paragraph (c) to read as follows:

§ 15.35 Measurement detector functions and bandwidths.

* * * * *

(c) Unless otherwise specified, *e.g.,* §§ 15.255(c), and 15.256(l)(5), when the radiated emission limits are expressed in terms of the average value of the emission, and pulsed operation is employed, the measurement field strength shall be determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 0.1 seconds. As an alternative (provided the

[13] 47 CFR 2.907. The Commission or a TCB may test a sample of a device to verify that it complies with the rules before granting approval for the equipment to be marketed. Examples of devices subject to certification include, but are not limited to, mobile phones; wireless local area networking equipment, remote control transmitters; land mobile radio transmitters; wireless medical telemetry transmitters; cordless telephones; and walkie-talkies.

[14] 47 CFR 15.31(c).

[15] 47 CFR 15.255(c)(4).

[16] 47 CFR 15.35(c).

[17] 5 U.S.C. 603(c)(1)–(c)(4).

transmitter operates for longer than 0.1 seconds) or in cases where the pulse train exceeds 0.1 seconds, the measured field strength shall be determined from the average absolute voltage during a 0.1 second interval during which the field strength is at its maximum value. The exact method of calculating the average field strength shall be submitted with any application for certification or shall be retained in the measurement data file for equipment subject to Supplier's Declaration of Conformity.

■ 4. Section 15.255 is amended by revising the introductory text of paragraphs (a), (c), and (c)(1), revising paragraph (c)(3), removing paragraph (c)(4), paragraphs (e) introductory text and (e)(2) and adding paragraph (e)(4) to read as follows:

§ 15.255 Operation within the band 57–71 GHz.

(a) Operation under the provisions of this section is not permitted for equipment used on satellites.

* * * * *

(c) *Radiated Power Limits.* Within the 57–71 GHz band, emission levels shall not exceed the following equivalent isotropically radiated power (EIRP):

(1) Products other than field disturbance sensors shall comply with one of the following power limits, as measured during the transmit interval:

* * * * *

(3) Field disturbance sensors other than those operating under the provisions of paragraph (c)(2) of this section shall comply with the following, as measured during the transmit interval:

(i) For field disturbance sensors that limit their operation to the 57–64 GHz frequency band, the average power shall not exceed 20 dBm and the average power spectral density shall not exceed 13 dBm/MHz. The transmit duty cycle shall not exceed 10% during any 33 ms interval (*i.e.,* the device shall not transmit longer than a total of 3.3 ms).

(ii) For field disturbance sensors operating over the entire 57–71 GHz frequency band, the average power shall not exceed 10 dBm.

* * * * *

(e) *Limits on transmitter conducted output power.* Except as specified paragraph (e)(1) of this section, the peak transmitter conducted output power shall not exceed 500 mW. Depending on the gain of the antenna, it may be necessary to operate the intentional radiator using a lower peak transmitter output power in order to comply with the EIRP limits specified in paragraph (c) of this section.

* * * * *

(2) Field disturbance sensors operating under the provisions of paragraph (c)(3) of this section shall comply with the following:

(i) For field disturbance sensors that limit their operation to the 57–64 GHz frequency band, the peak transmitter conducted output power shall not exceed 10 mW.

(ii) For field disturbance sensors operating over the entire 57–71 GHz frequency band, the peak transmitter conducted output power shall not exceed 0.1 mW.

* * * * *

(4) Compliance measurements of frequency-agile field disturbance sensors shall be performed with any related frequency sweep, step, or hop function activated.

* * * * *

[FR Doc. 2021–16637 Filed 8–18–21; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 86, No. 158

Thursday, August 19, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–20–0096, SC–20–327]

Revision of U.S. Standards for Grades of Watermelons

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the U.S. Standards for Grades of Watermelons. Changes will provide a common language for trade of watermelons.

DATES: Applicable September 20, 2021.

FOR FURTHER INFORMATION CONTACT: David G. Horner, USDA, Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; phone (540) 361–1128; fax (540) 361–1199; or email *Dave.Horner@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs, and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.''

AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The U.S. Standards for Grades of Fruits and Vegetables that no longer appear in the Code of Federal Regulations are maintained by AMS at: *http://www.ams.usda.gov/grades-standards.* AMS is revising the U.S. Standards for Grades using the procedures that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

On October 22, 2019, the National Watermelon Association (NWA), a trade association representing growers, retailers, and shippers from 30 U.S. states, Canada, and Central America, petitioned the USDA to revise the watermelon standards and update the official USDA visual aids library. AMS worked closely with the NWA throughout the development of the proposed revisions, soliciting their comments and suggestions about the standards through discussion drafts and presentations. Through this collaboration, AMS also developed and issued four new watermelon visual aids. On November 20, 2020, the NWA approved the proposed revisions, and on March 11, 2021, a Proposed Notice was published in the **Federal Register** (86 FR 13874). The public comment period closed May 10, 2021, with 45 comments from the industry, 44 of which fully supported the proposed revisions.

One commenter supported the revisions except for the proposed scoring guide for rind worm injury occurring on the ground spot. The commenter felt consumers will not overlook this defect because they understand that this is the ground spot, but was open to compromise. The NWA originally proposed to forgo scoring rind worm injury when affecting the ground spot. The color of the ground spot changes throughout the growing stages, from pale white to creamy yellow at maturity. Rind worm injury is tan in color and more readily blends with the color of the ground spot. AMS determined that rind worm injury on the ground spot is less detracting, but not to the extent that the grade standard would allow an unlimited amount. AMS believes scoring rind worm injury on the ground spot that seriously detracts from the appearance of the melon as damage, but not as serious damage, is a reasonable compromise. Rind worm injury occurring on portions of the melon other than the ground spot will continue to be scored as damage and serious damage.

To show their support of the revisions, commenters generally ended their submissions with the following or a similar statement: ''The USDA has the full support of the NWA and its membership (that crosses the country from coast to coast and border to border (and beyond in some cases). Thank you for your support, and your help in this vital effort.''

Therefore, AMS is making the following changes:

- § 51.1973 Tolerances: For defects at shipping point, en route, or at destination for the U.S. No. 1 and U.S. No. 2 grades, AMS will remove the 3% tolerance for Anthracnose at shipping point and remove the 5% tolerance for Anthracnose en route or at destination. The tolerance for decay will be revised to establish a total tolerance of 1% for shipping point and 2% for en route or at destination for Anthracnose and decay.
- § 51.1976 Size: AMS will align weights with current marketing trends by adjusting the average weights to 10 to 34 pounds.
- § 51.1985 Permanent defects and § 51.1986 Condition defects: AMS will remove sunburn as a condition defect and add sunburn as a permanent defect.
- § 51.1978 and § 51.1982: In § 51.1978, AMS will correct the typo in the definition for fairly well formed to read ''the perfect type for the variety'' instead of ''the perfect type of the variety.'' In § 51.1982, AMS will add the missing heading identifying the definition: ''Seedless watermelons.''
- § 51.1987 Classification of defects: AMS will base the scoring guides for sunburn, hail, rind worm injury, scars (and other similar defects), and transit rubs on a 15-pound melon and will base the scoring guide for hollow heart on any size melon. Lastly, AMS will limit the scoring of rind worm injury on the ground spot by scoring it under the definition of damage when seriously detracting from the appearance of the melon; rind worm injury occurring on the ground spot is not scorable as serious damage.
- AMS will remove all metric measurements from the standards. The revisions align the standards with current marketing trends.

(Authority: 7 U.S.C. 1621–1627.)

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–17814 Filed 8–18–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Kansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting via the web platform Webex on, Tuesday, August 31, 2021 at 12:00 p.m. Central Time. The purpose of the meeting is review the proposal on Voting as a topic of study.

DATES: The meetings will be held on: *https://civilrights.webex.com/civilrights/j.php?MTID=mab0460db9f95a59a28823a2dac771c88.*

- Tuesday, August 31, 2021, at 12:00 p.m. Central Time, 800–360–9505 USA Toll Free, Access code: 199 534 9277.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 499–4066.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Chair's Comments
III. Committee Discussion
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: August 16, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–17813 Filed 8–18–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Census Scientific Advisory Committee

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of public virtual meeting.

SUMMARY: The Census Bureau is giving notice of a virtual meeting of the Census Scientific Advisory Committee (CSAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including decennial, economic, field operations, information technology, and statistics. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments. Please visit the Census Advisory Committees website at *http://www.census.gov/cac* for the CSAC meeting information, including the agenda, and how to join the meeting.

DATES: The virtual meeting will be held on:

- Thursday, September 23, 2021, from 11:00 a.m. to 5:00 p.m. EDT, and
- Friday, September 24, 2021, from 11:00 a.m. to 5:00 p.m. EDT.

ADDRESSES: The meeting will be held via the WebEx platform at the following presentation links:

- September 23, 2021—*https://uscensus.webex.com/uscensus/onstage/g.php?MTID=e2d53a9ab6639cd6ca8d5a50514338576*
- September 24, 2021—*https://uscensus.webex.com/uscensus/onstage/g.php?MTID=e2694c3e057e623f254046b6018124d06.*

For audio, please call the following number: 1–888–970–4170 or 1–210–234–0001. When prompted, please use the following Password: Census#1, and Passcode: 7645589.

FOR FURTHER INFORMATION CONTACT: Shana Banks, Advisory Committee Branch Chief, Office of Program, Performance and Stakeholder Integration (PPSI), *shana.j.banks@census.gov,* Department of Commerce, Census Bureau, telephone 301–763–3815. For TTY callers, please use the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Committee provides scientific and technical expertise to address Census Bureau program needs and objectives. The members of the CSAC are appointed by the Director of the Census Bureau. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside during the virtual meeting for public comments on September 24, 2021. However, individuals with extensive questions or statements must submit them in writing to *shana.j.banks@census.gov,* (subject line ''2021 CSAC Fall Virtual Meeting Public Comment'').

Ron S. Jarmin, Acting Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: August 16, 2021.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–17822 Filed 8–18–21; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Services Surveys: BE–125, Quarterly Survey of Transactions in Selected Services and Intellectual Property With Foreign Persons

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance, in accordance with the Paperwork Reduction Act of 1995 (PRA), on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously

requested via the **Federal Register** on May 5, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Economic Analysis.

Title: Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons.

OMB Control Number: 0608–0067.

Form Number(s): BE–125.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 8,800 annually (2,200 filed each quarter; 1,700 reporting mandatory data, and 500 that would file exemption claims or voluntary responses).

Average Hours per Response: 21 hours is the average for those reporting data and one hour is the average for those filing an exemption claim. Hours may vary considerably among respondents because of differences in company size and complexity.

Burden Hours: 144,800 hours annually.

Needs and Uses: The data are needed to monitor U.S. trade in services, to analyze the impact of these cross-border services on the U.S. and foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities. The data are used in estimating the trade in services component of the U.S. international transactions accounts (ITAs) and national income and product accounts (NIPAs).

Affected Public: Business or other for-profit organizations.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108, as amended).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0608–0067.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–17800 Filed 8–18–21; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–30–2021]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico, Notification of Proposed Production Activity, MSD International GMBH (Puerto Rico Branch) LLC (Pharmaceuticals), Las Piedras, Puerto Rico

On April 16, 2021, MSD International GMBH (Puerto Rico Branch) LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 7G, in Las Piedras, Puerto Rico.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 22014–22015, April 26, 2021). On August 16, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: August 16, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–17794 Filed 8–18–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–027]

Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Results of the Expedited Five-Year Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revoking the countervailing duty (CVD) order on certain corrosion-resistant steel products (CORE) from the People's Republic of China (China) would likely lead to continuation or recurrence of countervailable subsidies at the levels indicated in the ''Final Results of the Sunset Review'' section of this notice.

DATES: Applicable August 19, 2021.

FOR FURTHER INFORMATION CONTACT: Zachary Le Vene, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0056.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2016, Commerce published in the **Federal Register** the CVD order on CORE from China.[1] On June 1, 2021, Commerce published the notice of initiation of the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce received notices of intent to participate from Cleveland-Cliffs Inc. (Cleveland-Cliffs) on June 14, 2021, and from United States Steel Corporation (U.S. Steel), California Steel Industries (CSI), Steel Dynamics Inc. (SDI), and Nucor Corporation (Nucor) on June 16, 2021 (collectively, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(l)(i).[3] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as domestic producers of CORE in the United States.

On July 1, 2021, Commerce received a substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no

[1] *See Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order,* 81 FR 48387 (July 25, 2016) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 29239 (June 1, 2021).

[3] *See* Domestic Interested Parties' Letters, ''Five-Year ('Sunset') Review of Countervailing Duty Order on Corrosion-Resistant Steel Products from China: Notice of Intent to Participate in Sunset Review,'' dated June 14, 2021; and ''Five-Year ('Sunset') Review of Antidumping and Countervailing Duty Orders on Corrosion-Resistant Steel Products from China: Notice of Intent to Participate''; ''Notice of Intent to participate in the First Five-Year Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from the People's Republic of China''; and ''Certain Corrosion-Resistant Steel Products from the People's Republic of China: Notice of Intent to Participate in Sunset Review,'' each dated June 16, 2021.

[4] *See* Domestic Interested Parties' Letter, ''Corrosion-Resistant Steel Products from the People's Republic of China: Substantive Response of the Domestic Interested Parties to Commerce's Notice of Initiation of Five-Year ('Sunset') Reviews,'' dated July 1, 2021.

substantive response from any other domestic or interested parties in this proceeding and no hearing was requested.

On July 22, 2021, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The products covered by this *Order* are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-, or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products subject to the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the *Order* may also enter under the following HTSUS subheadings: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the *Order* is dispositive. For a complete description of the scope of the *Order, see* the accompanying Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decisions Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via the Enforcement and Compliance Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* Additionally, a complete version of the Issues and Decisions Memorandum can be accessed directly as *http://enforcement.trade.gov/frn.*

Final Results of the Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would likely lead to the continuation or recurrence of countervailable subsidies at the following rates:

Producers/exporters	Net countervailable subsidy (percent)
Yieh Phui (China) Technomaterial Co., Ltd	39.05
Angang Group Hong Kong Company Ltd	241.07
Baoshan Iron & Steel Co., Ltd	241.07
Duferco S.A.; Hebei Iron & Steel Group; and Tangshan Iron and Steel Group Co., Ltd	241.07
Changshu Everbright Material Technology	241.07
Handan Iron & Steel Group	241.07
All-Others	39.05

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: August 13, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. History of the *Order*
IV. Scope of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
  2. Net Countervailable Subsidy Rates Likely To Prevail
  3. Nature of the Subsidies
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2021–17793 Filed 8–18–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–837; A–570–954; C–570–955]

Certain Magnesia Carbon Bricks From Mexico and the People's Republic of China: Continuation of Antidumping Duty Orders and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on June 1, 2021,'' dated July 22, 2021.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited First Sunset Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on certain magnesia carbon bricks (MCBs) from Mexico and the People's Republic of China (China) and the countervailing duty (CVD) order on MCBs from China would be likely to lead to continuation or recurrence of dumping, net countervailable subsidies, and injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable August 19, 2021.

FOR FURTHER INFORMATION CONTACT: Daniel Alexander, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4313.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2010, Commerce published its AD and CVD orders on MCBs from China and Mexico.[1] On January 4, 2021, Commerce published the notice of initiation of the second sunset review of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] As a result of its review, Commerce determined that revocation of the AD orders would likely lead to a continuation or recurrence of dumping and that revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidies. Commerce, therefore, notified the ITC of the magnitude of the margins and net countervailable subsidy rates likely to prevail should the AD and CVD orders be revoked.[3]

On August 3, 2021, the ITC published notice of its determination, pursuant to section 751(c) of the Act, that revocation of the AD and CVD orders on MCBs from Mexico and China would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Orders

The scope of these *Orders* includes certain chemically bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia (MgO) by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti-slip treatments or metal casing) and regardless of whether or not antioxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides).

Certain magnesia carbon bricks that are the subject of these *Orders* are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the AD and CVD orders would likely lead to a continuation or recurrence of dumping and countervailable subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year review of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with section 751(c) and 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: August 13, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–17790 Filed 8–18–21; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Antidumping Duty Orders*, 75 FR 57257 (September 20, 2010); *see also Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Order,* 75 FR 57442 (September 20, 2010) (collectively, *Orders*).

[2] *See Initiation of Five-Year (Sunset) Review,* 86 FR 60 (January 4, 2021).

[3] *See Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders,* 86 FR 24847 (May 10, 2021).

[4] *See Certain Magnesia Carbon Bricks from China and Mexico, Invs. 701–TA–468 and 731–TA–1166–1167 (Second Review),* USITC Publication 5223 (August 3, 2021).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–820]

Silicon Metal From Malaysia: Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing an antidumping duty order on silicon metal from Malaysia.

DATES: Applicable August 19, 2021.

FOR FURTHER INFORMATION CONTACT: Genevieve Coen, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–3251.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2021, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation of silicon metal from Malaysia.[1] On August 9, 2021, the ITC notified Commerce of its final determination, pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured within the meaning of section

[1] *See Silicon Metal from Malaysia: Final Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 133224 (June 24, 2021) (*Final Determination*), and accompanying Issues and Decision Memorandum.

735(b)(1)(A)(i) of the Act by reason of LTFV imports of silicon metal from Malaysia.[2]

Scope of the Order

The product covered by this order is silicon metal from Malaysia. For a complete description of the scope of the order, *see* the appendix to this notice.

Antidumping Duty Order

On August 9, 2021, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of silicon metal from Malaysia.[3] Therefore, in accordance with section 735(c)(2) of the Act, Commerce is issuing this antidumping duty order. Because the ITC determined that imports of silicon metal from Malaysia are materially injuring a U.S. industry, unliquidated entries of such merchandise from Malaysia, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of silicon metal from Malaysia. With the exception of entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determination, as further described below, antidumping duties will be assessed on unliquidated entries of silicon metal from Malaysia entered, or withdrawn from warehouse, for consumption, on or after February 1, 2021, the date of publication of the *Preliminary Determination.*[4]

Continuation of Suspension of Liquidation

Except as noted in the ''Provisional Measures'' section of this notice, in accordance with section 736 of the Act, Commerce intends to instruct CBP to continue to suspend liquidation on all relevant entries of silicon metal from Malaysia. These instructions suspending liquidation will remain in effect until further notice.

Commerce also intends to instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins indicated in the table below. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on subject merchandise, a cash deposit equal to the rates listed below. The relevant all-others rate applies to all producers or exporters not specifically listed.

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that account for a significant proportion of silicon metal from Malaysia, Commerce extended the four-month period to six months in this investigation. Commerce published the preliminary determination in this investigation on February 1, 2021.[5]

The extended provisional measures period, beginning on the date of publication of the *Preliminary Determination,* ended on July 31, 2021. Therefore, in accordance with section 733(d) of the Act, Commerce intends to instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of silicon metal from Malaysia entered, or withdrawn from warehouse, for consumption after July 30, 2021, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

Malaysia:

Exporter/producer	Estimated weighted-average dumping margin (percent)
PMB Silicon Sdn. Bhd	12.27
All Others	12.27

Notification to Interested Parties

This notice constitutes the antidumping duty order with respect to silicon metal from Malaysia pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This antidumping duty order is published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: August 13, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The scope of this order covers all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of this order.

Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS. While the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

[FR Doc. 2021–17791 Filed 8–18–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

[2] *See* ITC Letter, Notification of ITC Final Determination in Investigation No. 731–TA–1526 (Final), dated August 9, 2021.

[3] *Id.*

[4] *See Silicon Metal from Malaysia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 73676 (February 1, 2021) (*Preliminary Determination*).

[5] *See Preliminary Determination.*

SUMMARY: On August 10, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Changzhou Trina Solar Energy Co., Ltd. et al.* v. *United States,* Consol. Court No. 18–00176, sustaining the Department of Commerce's (Commerce) second remand redetermination pertaining to the 2015–2016 antidumping duty (AD) administrative review of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China). Commerce is notifying the public that the CIT's final judgment in this litigation is not in harmony with the final results reached by Commerce in the 2015–2016 AD administrative review of solar cells from China, and that Commerce is amending the final results of that review with respect to the dumping margin calculated for Trina and certain separate rate respondents.

DATES: Applicable August 20, 2021.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 2018, Commerce published the *Final Results* of its 2015–2016 AD administrative review of solar cells from China.[1] Trina[2] appealed Commerce's *Final Results.* On May 13, 2020, the CIT remanded to Commerce for further explanation or reconsideration its decision to use Maersk Line (Maersk) data, rather than Xeneta XS (Xeneta) data, to value ocean freight expenses.[3] The CIT also held that Commerce's decision to not adjust Trina's U.S. prices to account for countervailing duties related to the Export Buyer's Credit Program (EBCP) was contrary to law.[4]

In its first remand redetermination, Commerce continued to value Trina's ocean freight expenses using Maersk data, rather than Xeneta data; however, under protest, Commerce increased Trina's U.S. prices by the amount of countervailing duty imposed to offset the export subsidy provided by the Ex-Im Bank of China's EBCP.[5] In its second remand order, the CIT again directed Commerce to reconsider or further explain its valuation of ocean freight expenses, but it sustained Commerce's adjustment of Trina's U.S. prices to account for the Ex-Im Bank of China's EBCP.[6]

In its second remand redetermination, Commerce valued Trina's ocean freight expenses using Xeneta data, recalculated Trina's dumping margin based on this change, and assigned Trina's recalculated dumping margin to the separate rate respondents which participated in the litigation that led to the remand redetermination.[7] On August 10, 2021, the CIT sustained Commerce's second remand redetermination.[8]

Timken Notice

In its decision in *Timken,*[9] as clarified by *Diamond Sawblades,*[10] the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's August 10, 2021, judgment constitutes a final court decision that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results.* The amended weighted-average dumping margin for the respondents which participated in the litigation is as follows:

Exporter	Weighted-average dumping margin (percent)
Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science and Technology Co., Ltd./Yancheng Trina Solar Energy Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd./Trina Solar (Hefei) Science and Technology Co., Ltd	5.08
JingAo Solar Co., Ltd	5.08
JA Solar Technology Yangzhou Co., Ltd	5.08
Shanghai JA Solar Technology Co., Ltd	5.08

Cash Deposit Requirements

Because the cash deposit rates for all of the companies listed above have a superseded by subsequent cash deposit rates (*i.e.,* cash deposit rates have been established for these companies in subsequent final results of reviews), this notice does not affect the current cash deposit rates of these companies. Accordingly, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP) for these companies.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries of subject merchandise that was exported by any of the companies listed above and that was entered into the United States, or withdrawn from warehouse, for consumption during the period December 1, 2015, through November 30, 2016. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise exported by the companies listed above in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by the review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an importer-specific *ad valorem* assessment rate is zero or *de*

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016,* 83 FR 35616 (July 27, 2018) (*Final Results*).

[2] In the *Final Results,* Commerce treated the following seven companies as a single entity: Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science and Technology Co., Ltd./Yancheng Trina Solar Energy Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd./Trina Solar (Hefei) Science and Technology Co., Ltd (collectively, Trina).

[3] *See Changzhou Trina Solar Energy Co., Ltd. et al.,* 450 F. Supp. 3d 1301 (CIT 2020).

[4] *Id.*

[5] *See* Final Results of Remand Redetermination, *Changzhou Trina Solar Energy Co., Ltd., et al.* v. *United States,* Court No. 18–00176, Slip Op. 20–64 (Court of International Trade May 13, 2020) (August 6, 2020).

[6] *See Changzhou Trina Solar Energy Co.* v. *United States,* 492 F. Supp. 3d 1322 (CIT 2021).

[7] *See* Final Results of Remand Redetermination Pursuant to Court Remand, *Changzhou Trina Solar Energy Co., Ltd. et al.,* v. *United States* Court No. 18–00176, Slip Op. 21–2 (CIT January 4, 2021) (April 5, 2021).

[8] *See Changzhou Trina Solar Energy Co., Ltd. et al.* v. *United States,* Consol. Court No. 18–00176, Slip. Op. 21–98 (CIT August 10, 2021).

[9] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[10] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

minimis,[11] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), 751(a)(1), and 777(i)(1) of the Act.

Dated: August 13, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–17792 Filed 8–18–21; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Application and Reports for Scientific Research and Enhancement Permits Under the Endangered Species Act

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 21, 2021 (86 FR 20661) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Application and Reports for Scientific Research and Enhancement Permits Under the Endangered Species Act.

OMB Control Number: 0648–0402.

Form Number(s): None.

Type of Request: Regular submission (revision and extension of a currently approved collection).

Number of Respondents: 175 per year.

Average Hours per Response: 12 hours for permit applications; six hours for permit modification requests 6; two hours for annual reports.

Total Annual Burden Hours: 810.

Needs and Uses: This request is for revision and extension of a currently approved information collection.

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) imposed prohibitions against the taking of endangered species. Section 10 of the ESA allows permits authorizing the taking of endangered species for research/enhancement purposes. The corresponding regulations established procedures for persons to apply for such permits. In addition, the regulations set forth specific reporting requirements for such permit holders. The regulations contain two sets of information collections: (1) Applications for research/enhancement permits, and (2) reporting requirements for issued permits.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions. To issue permits under ESA Section 10(a)(1)(A), the National Marine Fisheries Service (NMFS) must determine that (1) such exceptions were applied for in good faith, (2) if granted and exercised, will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in Section 2 of the ESA.

The currently approved application and reporting requirements apply to Pacific marine and anadromous fish species, as requirements regarding other species are being addressed in a separate information collection. There is one administrative revision requested to the collection itself: NMFS will no longer require ''final'' permit reports; the reports will simply be considered annual reports that are submitted at the end of a permit's life span.

Affected Public: Federal government; State, local, or tribal governments; business or other for-profit organizations, educational institutions.

Frequency: Annually.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0402.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–17802 Filed 8–18–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Recreational Angler Survey of Sea Turtle Interactions

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before October 18, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0774 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Wendy Piniak, Biologist, NOAA National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, Maryland

20910; (301) 427–8401; *wendy.piniak@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's National Marine Fisheries Service (NOAA Fisheries) proposes to revise and extend a currently approved information collection designed to assess the extent of hook and line interactions between recreational anglers on piers and other shore-based fishing locations and sea turtles. The collection comprises an Angler Intercept Survey, a Fishing Site Characterization Form, a Survey Cover Sheet, and a Sea Turtle Incidental Capture Form. The Angler Intercept Survey will be verbally administered on piers and shore-based fishing locations within NOAA Fisheries Greater Atlantic Region and Southeast Region, and will be administered to approximately 20,000 individual recreational fishermen. The respondents will be verbally asked a series of questions about their fishing practices and observations of sea turtles and the interviewer will record their answers. The survey will also assess the feasibility of an intercept survey for this purpose in terms of response rates and data collection. The Fishing Site Characterization Form will be completed by the survey administrator at each fishing location and collects information on the structure and operation of the pier or shore-based fishing location. The Site Characterization Sheet will be completed by the survey administrator during each survey period and collects information on the environmental conditions for that particular day, the number of anglers fishing, number of lines in the water, and the number of surveys completed. Sea Turtle Incidental Capture Form will be filled out by a Sea Turtle Stranding and Salvage Network participant when a turtle is incidentally captured, regardless of if the capture occurs during a specific survey period, and collects information on the specific interaction with fishing gear. This information is necessary to compare to the angler survey data, to identify if certain factors or fishing practices influence the rate of interactions. In this extension, minor revisions will be made to the Sea Turtle Incidental Capture Form to eliminate duplication with other sea turtle stranding data collection efforts.

II. Method of Collection

The survey will be implemented through verbal interviews.

III. Data

OMB Control Number: 0648–0774.

Form Number(s): None.

Type of Review: Extension of a current information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 20,000.

Estimated Time per Response: 10 minutes for the Fishing Site Characterization Form, 5 minutes for the Survey Cover Sheet, 10 minutes for the Angler Intercept Survey, 5 minutes for the Sea Turtle Incidental Capture Form.

Estimated Total Annual Burden Hours: 1,134 hours.

Estimated Total Annual Cost to Public: $44,237.

Respondent's Obligation: Voluntary.

Legal Authority: Endangered Species Act (16 U.S.C. 1531 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–17804 Filed 8–18–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Weather and Society Survey

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before October 18, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Nicole Kurkowski, R2O Team Lead, DOC/NOAA/NWS/OSTI, 1325 East-West Highway, Silver Spring, MD 20910, 301.427.9104, *nicole.kurkowski@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a new collection of information.

The data collection is sponsored by DOC/NOAA/National Weather Service (NWS)/Office of Science and Technology Integration (OSTI). Currently, NOAA lacks data and data collection instruments that articulate and explicate how individuals receive, interpret, and respond to NOAA information, forecasts, and warnings for severe, winter, and tropical weather hazards. Furthermore, NOAA lacks this type of data longitudinally (*i.e.,* collected over time). Without this type of longitudinal data, NOAA, and the

NWS specifically, cannot determine if it has met its mission of saving lives and property, propose societal impact performance metrics, nor demonstrate if progress or improvements have been made, as outlined in the Weather Research and Forecasting Innovation Act of 2017. This effort aims to advance the Tornado Warning Improvement and Extension Program (TWIEP)'s goal to ''reduce the loss of life and economic losses from tornadoes through the development and extension of accurate, effective, and timely tornado forecasts, predictions, and warnings, including the prediction of tornadoes beyond one hour in advance (Pub. L. 115–25)''. This work addresses NOAA's 5-year Research and Development Vision Areas (2020–2026) Section 1.4 (FACETs). The Weather and Society Survey also advances the findings of the National Academy of Science 2012 report, ''Assessment of the NWS Modernization Program'', in reference to NWS' ''chain of events associated with a tornado warning'' (p52). This effort also advances the NWS Strategic Plan (2019–2022) ''Transformative Impact-Based Decision Support Services (IDSS) and Research to Operations and Operations to Research (R2O/O2R).'' Furthermore, the Survey furthers the NWS Weather Ready Nation (WRN) Roadmap (2013) Sections 1.1.1, 1.1.2, 1.1.3, 1.1.8, and 3.1.4.

This information would be collected at the Cooperative Institute for Mesoscale Meteorological Studies (CIMMS) and the University of Oklahoma's Center for Risk and Crisis Management (CRCM), who has developed data collection instruments that would allow for more routine and longitudinal data collection, as the data will be collected on an annual basis. Furthermore, this team has developed interactive ''dashboards'', or tools, to visualize the aggregated data.

Respondents include adults (age 18+) who reside in the United States, recruited by survey companies that maintain large panels of people who sign up to complete internet surveys, such as Qualtrics and Survey Sampling International. Respondents will be asked questions about the ways they have received, interpreted, and responded to NWS information, forecasts, and warnings for severe, tropical, and winter weather hazards. Questions about preparedness for specific hazards such as heat waves, tornadoes, and drought may also be included. This data collection serves many purposes, including gaining a better understanding of how key factors within a given population, or organization, vary over time, location, and across different groups; the ability to detect gradual trends or abrupt changes in those factors over time or in response to particular events; and the potential to explore possible correlations and causal relationships with other observed variables of interest. These data will be used by the OSTI in NWS to develop a baseline and performance metrics to improve the information and services it provides and to help members of the weather enterprise answer basic questions about the people in the communities they serve, which is a necessary step towards customizing and improving risk communication, education, and decision support to meet the characteristics of the community, including those in vulnerable populations. The information collected will help identify differences and best practices between communities and assist NWS in developing new education and risk communication strategies. The survey data and its associated dashboard will serve as interactive tools to allow NWS forecasters, partners, and policymakers to access and explore data for training and performance evaluation purposes.

II. Method of Collection

The primary method of data collection will be a web-based survey interface. Specific questions in the surveys determine how members of the U.S. public receive, comprehend, and respond to severe, tropical, and winter weather related information. Furthermore, these survey items will be translated to Spanish.

III. Data

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Review: Regular (New information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 20 minutes each for the Severe Weather Survey, Tropical Weather Survey, and Winter Weather Survey.

Estimated Total Annual Burden Hours: 1,000.

Estimated Total Annual Cost to Public: None.

Respondent's Obligation: Voluntary.

Legal Authority: 15 U.S.C. Ch. 111, Weather Research and Forecasting Information.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–17805 Filed 8–18–21; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; High Seas Fishing Permit Application, Logbook Reporting and Vessel Marking

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this

notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before October 18, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0304 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Christopher Rogers, Chief, International Fisheries Division, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service (NMFS), at 1315 East-West Hwy., Silver Spring, MD 20910; phone: 301–427–8350 or email: *christopher.rogers@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NMFS Office of International Affairs and Seafood Inspection collects information about United States (U.S.) vessels that fish on the high seas (waters beyond the U.S. exclusive economic zone). Such vessels are required to possess a fishing permit issued under the authority of the High Seas Fishing Compliance Act (HSFCA). Applicants for this permit must submit information (including a photo) to identify their vessels, and about owners and operators of the vessels, and intended fishing areas and fishing gear. The information submitted on the application is used to process permits and to maintain a register of U.S. vessels authorized to fish on the high seas.

Implementing regulations for the HSFCA also require vessels be marked for identification and enforcement purposes. Vessels must be marked in three locations (port and starboard sides of the deckhouse or hull, and on a weatherdeck) with their official number or radio call sign. Additional regulatory requirements include reporting on fishing activities and transshipments, notification of fishing trips for embarking observers (if selected), and operating a vessel monitoring system including power up and power down notifications. Finally, vessel operators may make requests for NMFS to authorize new fisheries (fishing gear, fishing area, target species) for U.S. vessels operating on the high seas.

These requirements apply to all U.S. vessels fishing on the high seas. Information on U.S. high seas fishing catch and effort is reported to the Food and Agriculture Organization of the United Nations as authorized under the HSFCA.

II. Method of Collection

Owners or operators of high seas fishing vessels must submit electronic permit applications (including vessel photo) via the NMFS online permitting system. Vessel operators submit logbook pages/transshipment notices/declarations to NMFS by email. Notifications for observer coverage and power down/power up of vessel monitoring systems are submitted via email. Requests for authorizing new fisheries on the high seas are submitted via letter/email. No information is submitted for the vessel marking requirement. The markings are only displayed on the vessel.

III. Data

OMB Number: 0648–0304.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for profit organizations.

Estimated Number of Respondents: 600.

Estimated Time per Response: 30 minutes per electronic vessel permit application including uploading a vessel photograph; for logbook reports, 6 minutes per day for days fish are caught, 1 minute per day for days when fish are not caught; 45 minutes (15 minutes for each of 3 locations) for vessel markings; 5 minutes for advance notices of transshipment and 10 minutes for transshipment reports; 5 minutes for power up/power down notifications for enhanced mobile transceiver units; 5 minutes to notify NMFS of a fishing trip to allow for observer coverage; and 30 minutes to prepare/submit requests to authorize a new fishery on the high seas.

Estimated Total Annual Burden Hours: 302.

Estimated Total Annual Cost to Public: $162,919.

Respondent's obligation: Mandatory (voluntary for new fishery authorization requests).

Legal Authority: HSFCA (Pub. L. 104–43) codified at 16 U.S.C. 5501 *et seq.*

IV. Request for Comments

We are soliciting public comments to allow the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–17803 Filed 8–18–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB325]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Telesis Geophysical Services, LLC

(Telesis) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from September 1, 2021, through November 1, 2021.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Telesis plans to conduct an archaeological and geohazards survey in the Eugene Island Area, Block EI389 and portions of Blocks EI385 and EI386, and in the Ewing Bank Area, in the E/2 portion of Block EW979. Telesis plans to use a single, 20-cubic inch airgun for a portion of survey effort, and would use a suite of high-resolution geophysical (HRG) acoustic sources aboard an autonomous underwater vehicle during the remainder. Please see Telesis's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Telesis in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) Survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

The survey is planned to occur for 4 days in summer, with the airgun used on 2.5 days and the HRG sources used for 1.5 days. Exposure modeling results were generated using the single airgun proxy for 3 days and using the high resolution sources proxy for 1 day. Because the results for the 3 days of airgun use assume use of a 90-in^3 airgun, the take numbers authorized through this LOA are considered conservative (*i.e.,* they likely overestimate take) due to differences in the sound source planned for use by Telesis, as compared to those modeled for the rule. The geographic distribution of survey effort is not known precisely, but would occur in Zones 2 and 5. Therefore, the take estimates for each species are based on the zone that has the greater value for the species (*i.e.,* Zone 2 or 5).

In this case, use of the exposure modeling produces results that are substantially smaller than average GOM group sizes for multiple species (*i.e.,* estimated exposure values are less than 10 percent of assumed average group size for the majority of species) (Maze-Foley and Mullin, 2006). NMFS' typical practice in such a situation is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, other relevant considerations here lead to a determination that increasing the estimated exposures to average group sizes would likely lead to an overestimate of actual potential take. In this circumstance, the very short survey duration and relatively small Level B harassment isopleths produced through use of a single airgun (compared with an airgun array) or HRG sources mean that it is unlikely that certain species would be encountered at all, much less that the encounter would result in exposure of a greater number of individuals than is estimated through use of the exposure modeling results. As a result, in this case NMFS has not increased the estimated exposure values to assumed average group sizes in authorizing take.

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock abundance reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale [3]	0	51	n/a
Sperm whale	2	2,207	0.1
Kogia spp	1	4,373	0.0
Beaked whales	40	3,768	1.1
Rough-toothed dolphin	1	4,853	0.0
Bottlenose dolphin	83	176,108	0.0
Clymene dolphin	2	11,895	0.0
Atlantic spotted dolphin	18	74,785	0.0
Pantropical spotted dolphin	10	102,361	0.0
Spinner dolphin	3	25,114	0.0
Striped dolphin	1	5,229	0.0
Fraser's dolphin	0	1,665	n/a
Risso's dolphin	1	3,764	0.0
Melon-headed whale	2	7,003	0.0
Pygmy killer whale	0	2,126	n/a
False killer whale	0	3,204	n/a
Killer whale	0	267	n/a
Short-finned pilot whale	0	1,981	n/a

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.
[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

Based on the analysis contained herein of Telesis's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Telesis authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: August 13, 2021.

Shannon Bettridge,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Community Input on Noise Mitigation

AGENCY: Office of Local Defense Community Cooperation, Department of Defense (DoD).

ACTION: Request for information.

SUMMARY: The Office of Local Defense Community Cooperation (OLDCC) is carrying out an effort requested under the report accompanying the Consolidated Appropriations Act, 2021, to, in part, work with communities to find measures that would mitigate noise caused by defense fixed wing aviation activities. Approximately 205 active and

reserve installations have been identified with ''covered facilities'' (hospitals, daycare facilities, schools, facilities serving senior citizens, and private residences) that appear to be located within one mile or a day-night average sound level of 65 decibel or greater of a military installation or another location at which military fixed wing aircraft are stationed. OLDCC is requesting affected communities adjacent to those 205 active and reserve installations to provide feedback through a web portal on measures to mitigate defense aviation noise for OLDCC to consider in its efforts to develop a community noise mitigation program in collaboration with the Service Secretaries.

DATES: Affected jurisdictions should provide feedback by October 4, 2021.

ADDRESSES: You may submit comments by any of the following methods:

A web portal (*https://forms.office.com/g/3pp0UCdArk*) has been specifically designed to receive this feedback from these jurisdictions over a 45-day period following publication of this notice.

FOR FURTHER INFORMATION CONTACT: Questions about providing feedback may be directed to: David R. Kennedy, 703–697–2136, *david.r.kennedy.civ@mail.mil* or Scott Spencer, 703–697–2133, *scott.j.spencer.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: The Office of Local Defense Community Cooperation seeks to work with communities and the Service Secretaries to find measures that would mitigate any impacts from noise caused by defense fixed wing aviation activities, with special attention to communities with new airframes, noting ''all types of mitigation efforts should be considered for implementation.''

A significant portion of working with communities at this time is to solicit feedback from leaders and other citizens of civilian jurisdictions within one mile or a day-night average sound level of 65 or greater of a military installation listed in the following list in this notice on what mitigation efforts should be specifically considered for this program. This feedback will be through answers to specific questions designed to help identify tools to mitigate the impact of jet noise, and the costs involved for each. A web portal (*https://forms.office.com/g/3pp0UCdArk*) has been specifically designed to receive this feedback from these jurisdictions over a 45-day period following publication of this notice. Several non-governmental organizations will also be contacted to share this notice with their respective membership to ensure as broad response population as possible.

Following receipt of this feedback, the Office of Local Defense Community Cooperation will work with the Service Secretaries to define parameters for a responsive and competitive noise mitigation program, including eligible activities, and publish a Federal Funding Opportunity Forecast for public comments later this year.

(1) Are you aware of noise problems within your jurisdiction as a result of military fixed wing aviation activities?

(2) What type of sound attenuation activities are you either presently undertaking or believe is necessary to address the jet (military fixed wing aircraft) noise issues in your jurisdiction—please provide as much detail as possible?

(3) Are there disadvantaged or underserved populations in your jurisdiction that may be unaware of this jet noise and the possibility of federal assistance to attenuate some portion of it? Are there recommendations for reaching them directly?

(4) Are you aware of the Federal Aviation Administration Part 150 program if the source of your noise emanates from a military mission attached to a civilian airport? If so, are you participating in the program and undertaking what activities under that program?

(5) If you have already been responding to noise from military fixed wing aircraft, how much would you estimate you have expended and for what?

TAB A—List of 205 Affected Military Installations

Military service	Component	Installation name	City	State or territory	Civil airport name	FAA part 150 status (1)
Air Force	AF Guard	Birmingham Airport	Birmingham	Alabama	Birmingham Municipal Airport.	Not current.
Navy	Navy Active	NOLF Brewton	Brewton	Alabama.		
Navy	Navy Active	NOLF Silverhill	Daphne	Alabama.		
Navy	Navy Active	NOLF Evergreen	Evergreen	Alabama.		
Navy	Navy Active	Barin Field	Foley	Alabama.		
Air Force	AF Active	Maxwell AFB	Maxwell AFB	Alabama.		
Air Force	AF Guard	Montgomery Regional Airport ANGB.	Montgomery	Alabama	Dannelly Field	Not current.
Navy	Navy Active	NOLF Summerdale	Summerdale	Alabama.		
Navy	Navy Active	NOLF Wolf	Summerdale	Alabama.		
Air Force	AF Active	Elmendorf AFB (a.k.a JBER)	Elmendorf AFB	Alaska.		
Air Force	AF Active	Fort Richardson	Fort Richardson	Alaska.		
Air Force	AF Active	Eielson AFB	North Pole	Alaska.		
Air Force	AF Active	Davis Monthan AFB	Davis Monthan AFB	Arizona.		
Air Force	AF Active	Gila Bend Air Force Auxiliary Field.	Gila Bend	Arizona.		
Air Force	AF Active	The Barry M Goldwater Air Force Range.	Gila Bend	Arizona.		
Air Force	AF Active	Luke AFB	Luke AFB	Arizona.		
Air Force	AF Guard	Sky Harbor IAP	Phoenix	Arizona	Phoenix Sky Harbor International Airport.	Not current.
Air Force	AF Guard	Tucson IAP	Tucson	Arizona	Tucson International Airport.	Not current.
Marine Corps.	MC Active	MCAS Yuma	Yuma	Arizona.		
Marine Corps.	MC Active	MCAS Yuma	Yuma	Arizona.		
Marine Corps.	MC Active	MCAS Yuma	Yuma	Arizona.		
Air Force	AF Guard	Fort Smith Map	Fort Smith	Arkansas	Fort Smith Municipal Airport.	Not current.
Air Force	AF Guard	Fort Chaffee Weapons Range	Unknown	Arkansas.		

TAB A—LIST OF 205 AFFECTED MILITARY INSTALLATIONS—Continued

Military service	Component	Installation name	City	State or territory	Civil airport name	FAA part 150 status (1)
Air Force	AF Active	Little Rock AFB	Unknown	Arkansas.		
Air Force	AF Active	Beale AFB	Beale AFB	California.		
Navy	Navy Active	NAS North Island	Coronado	California.		
Navy	Navy Active	NAF El Centro	El Centro	California.		
Air Force	AF Active	Travis AFB	Fairfield	California.		
Air Force	AF Guard	Fresno Yosemite International ANG.	Fresno	California	Fresno Air Terminal (Fresno Yosemite Airport).	Current.
Navy	Navy Active	NOLF Imperial Beach	Imperial Beach	California.		
Navy	Navy Active	NAS Lemoore CA	Lemoore NAS	California.		
Air Force	AF Active	Vandenberg Main Base	Lompoc	California.		
Army	Army Guard	NG TS AFRC Los Alamitos	Los Alamitos	California.		
Air Force	AF Guard	Moffett Field Cantonment Area	Moffett Field	California.		
Navy	Navy Active	NAVBASE Ventura Cty Point Mugu CA.	Point Mugu	California.		
Navy	Navy Active	NAWS China Lake	Ridgecrest	California.		
Air Force	AF Reserve	March ARB	Riverside	California.		
Marine Corps.	MC Active	MCAS Miramar	San Diego	California.		
Marine Corps.	MC Active	Twentynine Palms	Twentynine Palms	California.		
Air Force	AF Active	AF Plant 42	Unknown	California.		
Air Force	AF Active	Edwards AFB	Unknown	California.		
Air Force	AF Active	USAF Academy	Air Force Academy	Colorado.		
Air Force	AF Active	USAF Academy Site 2	Air Force Academy	Colorado.		
Air Force	AF Active	Buckley AFB	Aurora	Colorado.		
Air Force	AF Active	Peterson AFB	COLORADO SPRINGS.	Colorado.		
Air Force	AF Guard	Bradley IAP	East Granby	Connecticut	Bradley International	Not current.
Air Force	AF Guard	New Castle Airport	New Castle	Delaware	New Castle County Airport.	No Participation.
Air Force	AF Active	Dover AFB	Unknown	Delaware.		
Air Force	AF Active	Arbuckle Airfield	Avon Park	Florida.		
Air Force	AF Active	Avon Park AF Range	Avon Park	Florida.		
Air Force	AF Active	Cape Canaveral Air Force Station.	Cape Canaveral AFB	Florida.		
Air Force	AF Active	Eglin Air Force Auxiliary Field 3 Duke Fld.	Crestview	Florida.		
Air Force	AF Active	Eglin AFB (Eglin Main and Reservation).	Eglin AFB	Florida.		
Navy	Navy Active	Eglin AFB Navy EOD and JSF	Eglin AFB	Florida.		
Air Force	AF Reserve	Homestead ARB	Homestead	Florida.		
Navy	Navy Active	NAS Jacksonville FL	Jacksonville	Florida.		
Navy	Navy Active	NAVSTA Mayport FL	Jacksonville	Florida.		
Navy	Navy Active	OLF Whitehouse	Jacksonville	Florida.		
Navy	Navy Active	NAS Key West FL	Key West Nav Air St	Florida.		
Air Force	AF Active	Hurlburt Field	Mary Esther	Florida.		
Air Force	AF Active	Eglin Air Force Auxiliary Field 10.	Milton	Florida.		
Navy	Navy Active	NAS Whiting Field Milton FL	Milton	Florida.		
Navy	Navy Active	NOLF Choctaw	Navarre	Florida.		
Air Force	AF Active	Patrick AFB	Patrick AFB	Florida.		
Navy	Navy Active	NAS Pensacola FL	Pensacola	Florida.		
Air Force	AF Guard	Jacksonville IAP	Unknown	Florida	Jacksonville International Airport.	No Participation.
Air Force	AF Active	MacDill AFB	Unknown	Florida.		
Air Force	AF Active	Tyndall AFB	Unknown	Florida.		
Army	Army Active	Fort Benning	Columbus	Georgia.		
Air Force	AF Guard	Savannah/Hilton Head IAP	Garden City	Georgia	Savannah International.	Not current.
Air Force	AF Reserve	Dobbins ARB	Marrietta	Georgia.		
Air Force	AF Active	Moody AFB	Moody AFB	Georgia.		
Air Force	AF Active	Robins AFB	Robins AFB	Georgia.		
Army	Army Active	Fort Stewart—Hunter AAF	Savanah	Georgia.		
Air Force	AF Active	JBRM (Anderson AFB)	Anderson AFB	Guam.		
Marine Corps.	MC Active	MCB Hawaii (Kaneohe Bay)	Kaneohe	Hawaii.		
Navy	Navy Active	CNIC PMRF Barking Sands HI	Kekaha	Hawaii.		
Army	Army Active	Wheeler Army Airfield	Wahiawa	Hawaii.		
Air Force	AF Guard	Boise Air Terminal	Unknown	Idaho	Boise Air Terminal—Gowen Field.	Partially current.
Air Force	AF Active	Mountain Home AFB	Unknown	Idaho.		
Air Force	AF Active	Scott AFB	Belleville	Illinois.		
Air Force	AF Guard	General Wayne A Downing Peoria IAP.	Peoria	Illinois	Greater Peoria Airport (PIA), Peoria.	Not current.
Air Force	AF Reserve	Grissom ARB	Bunker Hill	Indiana.		
Army	Army Guard	NG Camp Atterbury	Edinburg	Indiana.		
Air Force	AF Guard	Fort Wayne IAP–1 848 Acres	Fort Wayne	Indiana	Fort Wayne International Airport.	No Participation.

TAB A—LIST OF 205 AFFECTED MILITARY INSTALLATIONS—Continued

Military service	Component	Installation name	City	State or territory	Civil airport name	FAA part 150 status (1)
Air Force	AF Guard	Sioux Gateway Airport (ANG)	Sioux City	Iowa	Sioux Gateway Airport (Brigadier General Bud Day Field).	No Participation.
Air Force	AF Guard	Forbes Field ANG	Topeka	Kansas	Topeka Regional Airport (Forbes Field).	No Participation.
Air Force	AF Active	McConnell AFB	Wichita	Kansas.		
Army	Army Active	Fort Campbell KY	Fort Campbell	Kentucky.		
Air Force	AF Guard	Louisville IAP-Standiford FL Site 1.	Louisville	Kentucky	Standiford Field	Current.
Air Force	AF Active	Barksdale AFB	Barksdale AFB	Louisiana.		
Navy	Navy Active	NAS JRB New Orleans LA	Belle Chasse	Louisiana.		
Air Force	AF Guard	Bangor IAP	Bangor	Maine	Bangor International Airport.	No Participation.
Air Force	AF Active	JB Andrews	Andrews AFB	Maryland.		
Air Force	AF Guard	Martin State Airport	Middle River	Maryland	Martin State Airport	No Participation.
Navy	Navy Active	Naval Air Station Patuxent River.	Patuxent River	Maryland.		
Navy	Navy Active	Webster Field	Saint Inigoes	Maryland.		
Air Force	AF Reserve	Westover ARB	Chicopee	Massachusetts	Westover Airport	Current.
Air Force	AF Guard	Otis ANG Base	Otis ANG, Mashpee	Massachusetts.		
Air Force	AF Guard	Barnes Map (ANG)	Westfield	Massachusetts	Westfield-Barnes Regional Airport.	Update in progress.
Air Force	AF Guard	Selfridge ANGB	Mount Clemens	Michigan.		
Air Force	AF Guard	Duluth IAP	Duluth	Minnesota	Duluth	Update in progress.
Army	Army Guard	NG Camp Ripley	Little Falls	Minnesota.		
Air Force	AF Reserve	Minn-St Paul	Minneapolis	Minnesota	Minneapolis-Saint Paul International.	Not current.
Air Force	AF Guard	Camp Shelby Range	Beaumont	Mississippi.		
Air Force	AF Active	Keesler AFB	Biloxi	Mississippi.		
Air Force	AF Guard	Jackson IAP Thompson Field Site 2.	Camp Shelby	Mississippi.		
Air Force	AF Guard	Jackson IAP Thompson Field	Flowood	Mississippi	Allen C. Thompson/ Jackson International.	Not current.
Air Force	AF Guard	Key Field	Meridian	Mississippi	Meridian Regional (Key Field) Airport.	No Participation.
Navy	Navy Active	NAS Meridian MS	Meridian	Mississippi.		
Navy	Navy Active	OLF Bravo	Preston	Mississippi.		
Air Force	AF Active	Columbus AFB	Unknown	Mississippi.		
Air Force	AF Guard	Rosecrans MAP (139AG)	St. Joseph	Missouri	Rosecrans Memorial Airport.	No Participation.
Air Force	AF Active	Whiteman AFB	Whiteman AFB	Missouri.		
Air Force	AF Guard	Great Falls IAP	Great Falls	Montana	Great Falls International Airport (GTF), Great Falls.	Not current.
Air Force	AF Guard	Lincoln Map	Lincoln	Nebraska	Lincoln Municipal Lincoln.	Not current.
Air Force	AF Active	Offut AFB	Offutt AFB.	Nebraska.		
Navy	Navy Active	NAS Fallon NV	Fallon	Nevada.		
Air Force	AF Active	Creech AFB	Indian Springs	Nevada.		
Air Force	AF Active	Nellis	Las Vegas	Nevada.		
Air Force	AF Guard	Reno Tahoe IAP	Reno	Nevada	Reno-Tahoe International Airport.	Not current.
Air Force	AF Guard	Pease ANGB	Portsmouth	New Hampshire	Pease International	Not current.
Air Force	AF Guard	Atlantic City IAP	Egg Harbor Township.	New Jersey	Atlantic City International Airport.	Not current.
Air Force	AF Active	McGuire (a.k.a. JB MDL)	Mcguire AFB	New Jersey.		
Air Force	AF Active	Lakehurst (a.k.a. JB MDL)	Unknown	New Jersey.		
Air Force	AF Active	Cannon AFB	Cannon AFB	New Mexico.		
Air Force	AF Active	Holloman AFB	Holloman AFB	New Mexico.		
Air Force	AF Active	Kirtland	Kirtland AFB	New Mexico.		
Air Force	AF Reserve	Niagara Falls	Niagara Falls	New York	Buffalo Niagara International.	Not current.
Air Force	AF Guard	Hancock Field	Syracuse	New York	Syracuse—Hancock International.	Not current.
Air Force	AF Guard	Stewart IAP	Unknown	New York	Stewart International Airport (New York Stewart.	No Participation.
Air Force	AF Guard	Francis S Gabreski Airport	Westhampton Beach	New York	Francis S. Gabreski Airport.	No Participation.
Marine Corps.	MC Active	ALF Bogue	Bogue	North Carolina.		
Air Force	AF Guard	Charlotte/Douglas IAP	Charlotte	North Carolina	Charlotte/Douglas International Airport (CLT), Charlotte.	Current.
Marine Corps.	MC Active	MCAS Cherry Point	Cherry Point	North Carolina.		
Army	Army Active	Fort Bragg—Pope AAF	Fort Bragg	North Carolina.		

TAB A—LIST OF 205 AFFECTED MILITARY INSTALLATIONS—Continued

Military service	Component	Installation name	City	State or territory	Civil airport name	FAA part 150 status (1)
Army	Army Active	Fort Bragg—Camp Mackall	Hoffman	North Carolina.		
Air Force	AF Active	Seymour Johnson AFB	Seymour Johnson AFB.	North Carolina.		
Air Force	AF Guard	Hector IAP	Fargo	North Dakota	Hector International Airport.	No Participation.
Air Force	AF Active	Grand Forks AFB	Grand Forks AFB	North Dakota.		
Air Force	AF Active	Minot AFB	Minot AFB	North Dakota.		
Air Force	AF Guard	Toledo/Exp Airport	Swanton	Ohio	Toledo Express Airport.	Not current.
Air Force	AF Guard	Rickenbacker	Unknown	Ohio	Rickenbacker Airport	Not current.
Air Force	AF Reserve	Youngstown	Vienna	Ohio	Youngstown Warren Airport.	No Participation.
Air Force	AF Active	Wright-Patt AFB	Wright-Patterson AFB.	Ohio.		
Air Force	AF Active	Altus AFB	Altus AFB	Oklahoma.		
Army	Army Active	Fort Sill	Fort Sill	Oklahoma.		
Air Force	AF Active	Tinker AFB	Oklahoma City	Oklahoma.		
Air Force	AF Guard	Will Rogers World Airport	Oklahoma City	Oklahoma	Will Rogers World Airport.	Not current.
Air Force	AF Guard	Tulsa IAP	Tulsa	Oklahoma	Tulsa International Airport.	Not current.
Air Force	AF Active	Kegelman Air Force Auxiliary Field.	Unknown	Oklahoma.		
Air Force	AF Active	Vance AFB	Unknown	Oklahoma.		
Air Force	AF Guard	Kingsley Field Cantonement Site 1.	Kingsley Field	Oregon	Crater Lake Klamath Regional.	No Participation.
Air Force	AF Guard	Portland IAP ANG	Portland	Oregon	Portland International	Not current.
Air Force	AF Reserve	Pittsburgh IAP (ARS)	Coraopolis	Pennsylvania	Greater Pittsburgh International Airport.	Not current.
Air Force	AF Guard	Harrisburg IAP (ANG)	Middletown	Pennsylvania	Harrisburg International Airport.	Current.
Air Force	AF Guard	Luis Munoz Marin IAP	Carolina	Puerto Rico	San Juan Airport/ Luis Muñoz Marín International Airport.	No Participation.
Air Force	AF Guard	Quonset State Airport	North Kingstown	Rhode Island	Quonset State Airport.	No Participation.
Marine Corps.	MC Active	MCAS Beaufort	Beaufort	South Carolina.		
Air Force	AF Active	Shaw AFB	Shaw AFB	South Carolina.		
Air Force	AF Active	Charleston AFB (a.k.a JB Charleston).	Unknown	South Carolina.		
Air Force	AF Guard	McEntire Joint National Guard Base.	Unknown	South Carolina.		
Air Force	AF Active	North Air Force Auxiliary Field	Unknown	South Carolina.		
Air Force	AF Active	Ellsworth AFB	Ellsworth AFB	South Dakota.		
Air Force	AF Guard	Joe Foss Field	Sioux Falls	South Dakota	Sioux Falls Regional Airport (Joe Foss Field).	No Participation.
Air Force	AF Guard	McGhee Tyson Airport	Louisville	Tennessee	McGhee-Tyson Airport.	Not Current.
Air Force	AF Guard	Memphis IAP	Memphis	Tennessee	Memphis International Airport.	Not current.
Air Force	AF Active	Dyess AFB	Abilene	Texas.		
Navy	Navy Active	NALF Goliad	Berclair	Texas.		
Navy	Navy Active	ALF Cabaniss	Corpus Christi	Texas.		
Navy	Navy Active	ALF Waldron	Corpus Christi	Texas.		
Navy	Navy Active	NAS Corpus Christi TX	Corpus Christi	Texas.		
Army	Army Active	Fort Bliss	El Paso	Texas.		
Navy	Navy Active	NAS Fort Worth JRB TX	Fort Worth	Texas.		
Air Force	AF Active	Kelly Field Annex	Kelly AFB	Texas.		
Army	Army Active	Fort Hood—Robert Gray AAF	Killeen	Texas.		
Navy	Navy Active	NAS Kingsville TX	Kingsville	Texas.		
Navy	Navy Active	ALF Orange	Orange Grove	Texas.		
Air Force	AF Active	Camp Bullis Training Annex	San Antonio	Texas.		
Air Force	AF Active	Laughlin AFB	Unknown	Texas.		
Air Force	AF Active	Randolph AFB	Unknown	Texas.		
Air Force	AF Active	Seguin Auxiliary Field	Unknown	Texas.		
Air Force	AF Active	Sheppard AFB	Unknown	Texas.		
Air Force	AF Active	Spofford Aux (Laughlin Aux #1)	Unknown	Texas.		
Air Force	AF Active	Hill AFB	Hill AFB	Utah.		
Air Force	AF Guard	Salt Lake City IAP	Salt Lake City	Utah	Salt Lake City Airport	Not current.
Air Force	AF Active	Utah Test and Training Range South UT.	Unknown	Utah.		
Air Force	AF Guard	Burlington IAP	South Burlington	Vermont	Burlington International.	Current.
Air Force	AF Active	Langley AFB (a.k.a JBLE)	Langley AFB	Virginia.		
Air Force	AF Active	Fort Eustis	Newport News	Virginia.		
Navy	Navy Active	NAVSTA Norfolk VA	Norfolk	Virginia.		

TAB A—LIST OF 205 AFFECTED MILITARY INSTALLATIONS—Continued

Military service	Component	Installation name	City	State or territory	Civil airport name	FAA part 150 status (1)
Navy	Navy Active	ALF Fentress Chesapke	Virginia Beach	Virginia.		
Navy	Navy Active	NAS Oceana VA	Virginia Beach	Virginia.		
Navy	Navy Active	OLF Coupeville	Coupeville	Washington.		
Air Force	AF Active	Fairchild AFB	Fairchild AFB	Washington.		
Navy	Navy Active	NAS Whidbey Island WA	Oak Harbor	Washington.		
Army	Army Active	McChord AFB	Tacoma	Washington.		
Air Force	AF Guard	Yeager Airport	Charleston	West Virginia	Yeager Airport	No Participation.
Air Force	AF Guard	EWVRA Shepherd Field	Martinsburg	West Virginia	Eastern WV Regional Airport/ Shepherd Field.	Initiated but not completed.
Air Force	AF Guard	Volk ANGB	Camp Douglas	Wisconsin.		
Air Force	AF Guard	Gen Mitchell IAP	Milwaukee	Wisconsin	General Mitchell International Airport.	Not current.
Army	Army Reserve	Fort McCoy	Sparta	Wisconsin.		
Air Force	AF Guard	Truax ANGB	Unknown	Wisconsin	Dane County Regional-Truax Field.	Update in progress.
Air Force	AF Active	F E Warren AFB	Cheyenne	Wyoming.		
Air Force	AF Guard	Cheyenne Regional Airport	Unknown	Wyoming	Cheyenne Airport	Not current.

Note:
(1) Only airports that are owned and operated by a local civilian authority will have an identified Civil Airport Name and FAA Status of the locations Part 150 Federal Program.

Dated: August 16, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–17775 Filed 8–18–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are DeafBlind Program; Correction

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice; correction.

SUMMARY: On July 26, 2021, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for new awards for fiscal year (FY) 2021 for the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are DeafBlind program, Assistance Listing Number 84.160D. We are correcting one error in the *Application Requirements.* All other information in the NIA, including the August 30, 2021, deadline for transmittal of applications, remains the same.

DATES: This correction is applicable August 19, 2021.

FOR FURTHER INFORMATION CONTACT: Kristen Rhinehart-Fernandez, U.S. Department of Education, 400 Maryland Avenue SW, Room 5094, Potomac Center Plaza, Washington, DC 20212–2800. Telephone: (202) 245–6103. Email: *160D@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On July 26, 2021, we published the NIA in the **Federal Register** (86 FR 40021). Under *Application Requirements,* ''Quality of Project Services,'' paragraph (c)(8)(i) directed applicants to paragraph (a)(2)(i), which is not included in the requirements. This notice corrects the error made in paragraph (c)(8)(i) and directs applicants to paragraph (a)(3) instead of (a)(2)(i). All other requirements and conditions in the NIA remain the same.

Correction

In FR Doc. 2021–15914 appearing on page 40023 of the **Federal Register** of July 26, 2021, the following corrections are made:

1. On page 40023, in the right column, under *Application Requirements,* ''Quality of Project Services,'' (c)(8)(i), remove ''(a)(2)(i)'' and add in its place ''(a)(3)''.

Note: This change does not change any requirements in the notice. Applicants were made aware of this correction through a pre-application meeting via conference call on July 30, 2021. The correction is included in the 84.160D pre-applicant slide deck and pre-application meeting summary of questions and answers, both available at *https://ncrtm.ed.gov/RSAGrantInfo.aspx.* The summary of questions and answers will be available within six business days after the pre-application meeting.

Program Authority: 29 U.S.C. 709(c) and 772(a) and (f).

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this notice, the NIA, and a copy of the application in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Katherine Neas,

Acting Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2021–17772 Filed 8–18–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Final Priority and Requirements—Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are DeafBlind Program—Correction

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority and requirements; correction.

SUMMARY: On July 26, 2021, the Department of Education (Department) published in the **Federal Register** a notice of final priority and requirements (NFP) for new awards for fiscal year (FY) 2021 for the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are DeafBlind program, Assistance Listing Number 84.160D. We are correcting one error in the *Application Requirements.* All other information in the NFP remains the same.

DATES: This correction is applicable August 19, 2021.

FOR FURTHER INFORMATION CONTACT: Kristen Rhinehart-Fernandez, U.S. Department of Education, 400 Maryland Avenue SW, Room 5094, Potomac Center Plaza, Washington, DC 20212–2800. Telephone: (202) 245–6103. Email: *160D@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On July 26, 2021, we published the NFP in the **Federal Register** (86 FR 39965). In the NFP, under *Application Requirements,* ''Quality of Project Services,'' paragraph (c)(8)(i) directed applicants to paragraph (a)(2)(i), which is not included in the requirements. We are correcting the cross-reference in paragraph (c)(8)(i) to direct applicants to paragraph (a)(3) instead of (a)(2)(i). All other requirements and conditions in the NFP remain the same.

Applicants were made aware of this correction in a pre-application meeting via conference call on July 30, 2021. The correction is included in the 84.160D pre-application slide deck and pre-application meeting summary of questions and answers, both available at *https://ncrtm.ed.gov/RSAGrantInfo.aspx.*

Correction

In FR Doc. 2021–15915, beginning on page 39965 in the issue of July 26, 2021, make the following correction:

On page 39975, in the middle column, under *Application Requirements,* ''Quality of Project Services,'' paragraph (c)(8)(i), remove ''paragraph (a)(2)(i)'' and add in its place ''paragraph (a)(3)''.

Program Authority: 29 U.S.C. 709(c) and 772(a) and (f).

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document, the NFP, and a copy of the application in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Katherine Neas,

Acting Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2021–17771 Filed 8–18–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15003–001]

New Hampshire Renewable Resources, LLC; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 15003–001.

c. *Date Filed:* February 8, 2021.

d. *Applicant:* New Hampshire Renewable Resources, LLC (New Hampshire Renewable).

e. *Name of Project:* Sugar River II Hydroelectric Project (project).

f. *Location:* On the Sugar River in Sullivan County, New Hampshire. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Paul V. Nolan, New Hampshire Renewable Resources, LLC, 5515 North 17th Street, Arlington, VA 22205; Phone at (703) 534–5509, or email at *pvnpvndiver@gmail.com.*

i. *FERC Contact:* Michael Watts at (202) 502–6123, or *michael.watts@ferc.gov.*

j. The current license for the Sugar River II Hydroelectric Project is held by Sugar River Hydro II, LLC (Sugar River Hydro) under Project No. 10934. On April 30, 2019, Sugar River Hydro filed a letter stating that it did not intend to file an application for a subsequent license. In response to a solicitation notice issued by the Commission on May 8, 2019, New Hampshire Renewable filed a pre-application document and notice of intent to file an application for the project. Commission staff assigned Project No. 15003 for the licensing proceeding initiated by New Hampshire Renewable's filing.

k. *Deadline for filing scoping comments:* September 13, 2021.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Sugar River II Hydroelectric Project (P–15003–001).

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. The application is not ready for environmental analysis at this time.

m. The existing Sugar River II Hydroelectric Project consists of: (1) A 113.5-foot-long, 10-foot-high reinforced concrete dam that includes the following sections: (a) A 35-foot-long left abutment section with a cut-off wall; (b) a 42.5-foot-long spillway section with a crest elevation of 822 feet National Geodetic Vertical Datum 1929 (NGVD 29) that contains: (i) Two 11.5-foot-wide, 10-foot-high stanchion bays equipped with wooden stop logs; (ii) a 13-foot-wide, 10-foot-high hydraulically-operated steel slide gate; and (iii) a 3-foot-wide sluiceway; and (c) a 36-foot-long right abutment section with a cut-off wall; (2) a 1.4-acre impoundment with a storage capacity of 11 acre-feet at an elevation of 822 feet NGVD 29; (3) a 14-foot-wide, 12-foot-high intake structure adjacent to the right abutment equipped with a trashrack with 1-inch clear bar spacing; (4) a 650-foot-long buried penstock that includes a 400-foot-long, 7-foot-diameter steel section and a 250-foot-long, 7-foot-diameter concrete section; (5) a 35-foot-long, 27-foot-wide concrete and brick masonry powerhouse containing a single 200-kilowatt Francis-type turbine-generator unit; (6) a 75-foot-long, 4.16-kilovolt overhead transmission line and a transformer that connects the project to the local utility distribution system; and (7) appurtenant facilities.

Downstream fish passage facilities include the 3-foot-wide sluiceway in the dam spillway and a 3-foot-deep plunge pool located downstream of the stanchion bays. The project also includes an existing parking area on the north bank of the project's impoundment.

Article 402 of the current license requires the licensee to operate the project in an instantaneous run-of-river mode. The project is operated in a run-of-river mode by manually raising and lowering the spillway slide gate, and removing/adding stop logs to the stanchion bays to pass flows and maintain a constant impoundment water surface elevation of 822 feet NGVD 29. The project creates an approximately 400-foot-long bypassed reach of the Sugar River.

Article 403 of the current license, as amended on June 27, 1996, requires a minimum flow release to the bypassed reach of: (1) 15 cubic feet per second (cfs) or inflow, whichever is less, through the downstream fishway from June 16 through March 31 to protect aquatic resources and water quality in the bypassed reach; and (2) 20 cfs from April 1 through June 15, during the downstream migration season for Atlantic Salmon smolts. The average annual energy production of the project from 2010 to 2015 was 650.44 MWh.

New Hampshire Renewable proposes to: (1) Continue to operate the project in an instantaneous run-of-river mode, such that project outflow approximates inflow; (2) release a year-round minimum flow of 15 cfs; (3) install an automation system to operate the project in a run-of-river mode; and (4) consult with the New Hampshire State Historic Preservation Officer before beginning any land-disturbing activities or alterations to known historic structures within the project boundary.

n. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

o. You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Scoping Process*

Commission staff will prepare either an environmental assessment (EA) or an Environmental Impact Statement (EIS) that describes and evaluates the probable effects, if any, of the licensee's proposed action and alternatives. The EA or EIS will consider environmental impacts and reasonable alternatives to the proposed action. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission prepares an EA or an EIS. At this time, we do not anticipate holding on-site scoping meetings. Instead, we are soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 1 (SD1), issued August 13, 2021.

Copies of the SD1 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD1 may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: August 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–17783 Filed 8–18–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2879–012]

Green Mountain Power Corporation; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Bolton Falls Hydroelectric Project, located on the Winooski River in Washington County, Vermont, and has prepared a Draft Environmental Assessment (DEA) for the project. No federal land is occupied by project works or located within the project boundary.

The DEA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the

Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2879–012.

Any questions regarding this notice may be directed to Michael Tust at (202) 502–6522 or *michael.tust@ferc.gov.*

Dated: August 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–17784 Filed 8–18–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–217–000.
Applicants: Delilah Solar Energy LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Delilah Solar Energy LLC.
Filed Date: 8/13/21.
Accession Number: 20210813–5030.
Comment Date: 5 p.m. ET 9/3/21.

Docket Numbers: EG21–218–000.
Applicants: E. BarreCo Corp LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of E. BarreCo Corp LLC.
Filed Date: 8/13/21.
Accession Number: 20210813–5051.
Comment Date: 5 p.m. ET 9/3/21.

Docket Numbers: EG21–219–000.
Applicants: Lick Creek Solar, LLC.
Description: Self-Certification of EG or FC of Lick Creek Solar, LLC.
Filed Date: 8/13/21.
Accession Number: 20210813–5150.
Comment Date: 5 p.m. ET 9/3/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1734–002.
Applicants: Alabama Power Company.
Description: Compliance filing: Order No. 864 OATT Second Deficiency Response Filing to be effective N/A.
Filed Date: 8/13/21.
Accession Number: 20210813–5153.
Comment Date: 5 p.m. ET 9/3/21.

Docket Numbers: ER21–1858–002.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: Tariff Amendment: CAPX2020–BRKGS–OMA–537–Supp Filing–0.1.2 to be effective 10/12/2021.
Filed Date: 8/13/21.
Accession Number: 20210813–5148.
Comment Date: 5 p.m. ET 9/3/21.

Docket Numbers: ER21–1934–002.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: Tariff Amendment: CAPX2020-Fargo-OMA–307–Supplemental Filing 0.1.2 to be effective 10/12/2021.
Filed Date: 8/13/21.
Accession Number: 20210813–5135.
Comment Date: 5 p.m. ET 9/3/21.

Docket Numbers: ER21–2670–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 6125 and Original ICSA, SA No. 6126; Queue No. AD2–134 to be effective 7/16/2021.
Filed Date: 8/12/21.
Accession Number: 20210812–5137.
Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21–2672–000.
Applicants: New York Transco, LLC, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: New York Transco, LLC submits tariff filing per 35.13(a)(2)(iii: 205 EPCA among Transco, ADM Milling and NYISO SA No. 2643 to be effective 7/28/2021.
Filed Date: 8/13/21.
Accession Number: 20210813–5125.
Comment Date: 5 p.m. ET 9/3/21.

Docket Numbers: ER21–2673–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA 6159; Queue No. AG1–148 to be effective 7/14/2021.
Filed Date: 8/13/21.
Accession Number: 20210813–5126.
Comment Date: 5 p.m. ET 9/3/21.

Docket Numbers: ER21–2674–000.
Applicants: Borderlands Wind, LLC.
Description: Baseline eTariff Filing: Borderlands Wind, LLC Application for Market-Based Rate Authorization to be effective 10/12/2021.
Filed Date: 8/13/21.
Accession Number: 20210813–5138.
Comment Date: 5 p.m. ET 9/3/21.

Docket Numbers: ER21–2675–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3285R4 AEP Energy Partners, Inc. NITSA and NOA Cancellation to be effective 7/1/2021.
Filed Date: 8/13/21.
Accession Number: 20210813–5140.
Comment Date: 5 p.m. ET 9/3/21.

Docket Numbers: ER21–2676–000.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Overlapping Congestion Compliance Filing in Response to Order in EL17–89 to be effective 3/31/2022.
Filed Date: 8/13/21.
Accession Number: 20210813–5144.
Comment Date: 5 p.m. ET 9/3/21.

Docket Numbers: ER21–2677–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2021–08–13_MISO and SPP Compliance filing re Pseudo-Tie to be effective 3/31/2022.
Filed Date: 8/13/21.
Accession Number: 20210813–5145.
Comment Date: 5 p.m. ET 9/3/21.

Docket Numbers: ER21–669–004.
Applicants: Morongo Transmission LLC.
Description: Compliance filing: Amended Compliance Filing to be effective 5/15/2021.
Filed Date: 8/12/21.
Accession Number: 20210812–5144.
Comment Date: 5 p.m. ET 9/2/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 13, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–17797 Filed 8–18–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1858–023]

Beaver City Corporation; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Cooperating Agencies and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 1858–023.

c. *Date filed:* July 30, 2021.

d. *Applicant:* Beaver City Corporation.

e. *Name of Project:* Beaver City Canyon Plant No. 2 Hydroelectric Project.

f. *Location:* On the Beaver River, in Beaver County, Utah, about 5 miles east of the city of Beaver. The project currently occupies 10.18 acres of federal land administered by the U.S. Forest Service, and 1.87 acres of federal land managed by the U.S. Bureau of Land Management. As proposed, the project would occupy 11.5 acres of federal land administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Jason Brown, Beaver City Manager, 30 West 300 North, Beaver, UT 84713; (435) 438–2451.

i. *FERC Contact:* Evan Williams at (202) 502–8462, or at *evan.williams@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* September 28, 2021.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Beaver City Canyon Plant No. 2 Hydroelectric Project (P–1858–023).

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The existing project consists of: (1) A 17-foot-high by 65-foot-wide diversion dam; (2) a 30-inch-diameter, 11,450-foot-long black steel penstock; (3) a 34-foot-long by 41-foot-wide stone powerhouse containing an impulse turbine and one generating unit with an installed capacity of 625 kilowatts; (4) a 4-foot-wide by 150-foot-long tailrace channel; (5) a 12.5-kilovolt, approximately 21,000-foot-long transmission line; and (6) appurtenant facilities. Beaver City Corporation proposes to abandon the existing powerhouse and tailrace and construct: (1) A new 40-foot-long by 27-foot-wide powerhouse to contain a new turbine-generator with an installed capacity of 720 kilowatts, and (2) a new approximately 50-foot-long by approximately 7.5-foot-wide to 19-foot-wide tailrace. The new powerhouse and tailrace would be constructed approximately 50 feet upstream of the existing powerhouse, and the existing powerhouse would be retained within the project boundary as an historic structure. Beaver City Corporation also proposes to remove approximately 20,930 feet of the existing 12.5-kilovolt transmission line from the project.

o. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–1858–023). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19) issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter/ Request for Additional Information.	September 2021.
Issue Acceptance Letter ..	December 2021.
Issue Scoping Document 1.	January 2022.
Request for Additional Information (if necessary).	March 2022.
Issue Scoping Document 2 (if necessary).	April 2022.

Notice of Ready for Environmental Analysis.	April 2022.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: August 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–17786 Filed 8–18–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–57–000]

Mountain Valley Pipeline, LLC; Notice of Availability of the Environmental Assessment for the Proposed Mountain Valley Pipeline Amendment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Mountain Valley Pipeline Amendment Project (Amendment Project), proposed by Mountain Valley Pipeline, LLC (Mountain Valley) in the above-referenced docket. Mountain Valley requests authorization to change the crossing method of specific waterbodies and wetlands from open-cut dry crossings (as authorized by its October 13, 2017 Certificate of Public Convenience and Necessity [Certificate]) to trenchless methods (conventional bore, guided conventional bore, or Direct Pipe® [1]). In addition, Mountain Valley requests authorization for two minor route adjustments to avoid wetlands and waterbodies and authorization to conduct nighttime construction at eight trenchless crossings.

The EA assesses the potential environmental effects of the construction and operation of the Amendment Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

[1] Direct Pipe® is a construction method developed by Herrenknecht AG that combines microtunneling and horizontal direction drill (HDD).

The U.S. Army Corps of Engineers (COE) is a federal cooperating agency who assisted us in preparing this EA because they have jurisdiction by law or special expertise with respect to impacts to waters of the U.S. The COE may adopt the EA per 40 CFR 1501.8 if, after an independent review of the document, it concludes that their requirements and/or regulatory responsibilities have been satisfied. However, the COE would present its own conclusions and recommendations in its respective and applicable records of decision or determinations. Otherwise, it may elect to conduct its own supplemental environmental analyses.

The proposed Amendment Project includes the following:

- 120 trenchless crossings (117 conventional bores, 2 guided conventional bores, and 1 Direct Pipe®) of 47 wetlands and 136 streams in Wetzel, Lewis, Webster, Nicholas, Greenbrier, Summers, and Monroe counties, West Virginia and Giles, Montgomery, Roanoke, Franklin, and Pittsylvania, counties, Virginia;
- avoidance of one wetland via a shift in the permanent operational right-of-way at MP 0.70;
- avoidance of one waterbody due to a route adjustment at MP 230.8; and
- 24-hour construction activities at the previously authorized Gauley River and Roanoke River, two guided conventional bore crossings, the Direct Pipe® crossing, and three conventional bore locations.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field, (*i.e.,* CP21–57). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on September 13, 2021.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–57–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you

do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: August 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–17782 Filed 8–18–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2433–125]

Wisconsin Public Service Corporation; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 13, 2021.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Reservoir Drawdown Plan.

b. *Project No.:* 2433–125.

c. *Date Filed:* July 28, 2021.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Grand Rapids Hydroelectric Project.

f. *Location:* The project is located on the Menominee River in Marinette County, Wisconsin, and Menominee County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. James Nuthals, Principal Environmental Consultant, Wisconsin Public Service Corporation, 700 North Adams Street, P.O. Box 19001, Green Bay, WI 54307–9001; (920) 433–1460; *james.nuthals@wecenergygroup.com.*

i. *FERC Contact:* Linda Stewart, (202) 502–8184, *linda.stewart@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* August 30, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2433–125. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

k. *Description of Request:* Wisconsin Public Service Corporation (licensee) requests approval of its filed Reservoir Drawdown Plan, which would allow the licensee to lower the reservoir in order to repair damaged flashboards on the overflow spillway. The licensee proposes to draw down the reservoir to a target elevation of 661.45 feet, which is 3 feet below the required minimum reservoir water surface elevation. The licensee would begin the drawdown on or before September 7, 2021, and return the reservoir to its normal operating elevation the week of October 4, 2021. The minimum flow requirement under Article 402 of the license would be maintained during the drawdown period; however, the run-of-river operation and reservoir water surface elevation requirements under Article 401 would be temporarily modified during the drawdown period.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting, or intervening;

and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: August 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–17781 Filed 8–18–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM20–10–000; AD19–19–000]

Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act; Supplemental Notice of Workshop

As announced in the Notice of Workshop issued in the above-captioned proceedings on April 15, 2021, Federal Energy Regulatory Commission (Commission) staff will convene a workshop to discuss certain shared savings incentive approaches that may foster deployment of transmission technologies. The workshop will be held on Friday, September 10, 2021, from approximately 8:30 a.m. to 5:30 p.m. Eastern Time. The workshop will be held virtually via WebEx. Commissioners may attend and participate.

Transmission technologies, as deployed in certain circumstances, may enhance reliability, efficiency, and capacity, and improve the operation of new or existing transmission facilities. The workshop will discuss issues related to shared savings approaches [1] for transmission technologies seeking incentives under Federal Power Act section 219.[2] The workshop will focus on how to calculate *ex ante* and *ex post* benefit analyses for transmission technologies seeking incentives. Specifically, the workshop will explore the maturity of the modeling approaches for various transmission technologies; the data needed to study the benefits/costs of such technologies; issues pertaining to access to or confidentiality of this data; the time horizons that should be considered for such studies; and other issues related to verifying forecasted benefits. The workshop may also discuss other issues, including whether and how to account for circumstances in which benefits do not materialize as anticipated.

Attached to this Supplemental Notice is an agenda for the workshop, which includes the final workshop program and expected speakers. The workshop will be open for the public to attend virtually. Information on the workshop will also be posted on the Calendar of Events on the Commission's website, *http://www.ferc.gov,* prior to the event. The workshop will be transcribed. Transcripts of the workshop will be available for a fee from Ace-Federal Reporters, Inc. (202–347–3700).

For more information about this workshop, please contact David Borden, 202–502–8734, *david.borden@ferc.gov* or Samin Peirovi, 202–502–8080, *samin.peirovi@ferc.gov* for technical questions; Meghan O'Brien, 202–502–6137, *meghan.o'brien@ferc.gov* for legal questions; and Sarah McKinley, 202–502–8368, *sarah.mckinley@ferc.gov* for logistical issues.

Dated: August 13, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–17796 Filed 8–18–21; 8:45 am]

BILLING CODE 6717–01–P

[1] *See, e.g.,* WATT Coalition and Advanced Energy Economy July 1, 2020 Comments.

[2] 16 U.S.C. 824s(b)(3).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15229–000]

Alabama Power Company; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 27, 2021, Alabama Power Company filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Chandler Mountain Pumped Storage Project No. 15229–000 (Chandler Mountain Project, or project), a closed-loop pumped storage project to be located in Etowah and St. Clair Counties, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed pumped storage project would consist of the following: (1) An upper reservoir with a maximum water surface elevation of 1,364 feet mean sea level (msl); (2) four dam sections and one spillway section at a crest elevation of 895 feet, each; (3) an upper reservoir intake structure; (4) an underground powerhouse containing reversible pump-turbine unit(s) for a maximum installed capacity of 1,600 megawatts; (5) a lower reservoir discharge structure; (6) a lower reservoir with a maximum water surface elevation of 889 feet msl; (7) a transmission line(s) and switchyard(s) connecting the project to the grid; and (8) appurtenant facilities.

Applicant Contact: Ted McCullough, 600 North 18th Street, 16N–8180, Birmingham, Alabama 35291; phone: (205) 257–6227.

FERC Contact: Navreet Deo; phone: (202) 502–6304; email: *navreet.deo@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15229–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15229) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–17785 Filed 8–18–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Notice of Interim Approval of Rate Schedules for Jim Woodruff Project

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of interim approval.

SUMMARY: The Administrator for the Southeastern Power Administration (Southeastern) has confirmed and approved, on an interim basis, rate schedules JW–1–L and JW–2–F for the sale of power from the Jim Woodruff Project. The rate schedules are approved on an interim basis through September 30, 2026, and are subject to confirmation and approval by the Federal Energy Regulatory Commission (FERC) on a final basis.

DATES: The approval of rates on an interim basis is effective October 1, 2021.

FOR FURTHER INFORMATION CONTACT: Samuel W. Loggins, Assistant Administrator, Finance and Marketing, Southeastern Power Administration, U.S. Department of Energy, 1166 Athens Tech Road, Elberton, GA 30635–6711, (706) 213–3805; Email: *Samuel.Loggins@sepa.doe.gov.*

SUPPLEMENTARY INFORMATION: FERC, by order issued October 20, 2016, 157 FERC ¶ 62,043, confirmed and approved Rate Schedules JW–1–K and JW–2–F for the period October 1, 2016 through September 30, 2021. This order replaces these rate schedules on an interim basis, subject to final approval by FERC.

Department of Energy

Administrator, Southeastern Power Administration

In the Matter of:
Southeastern Power Administration
Rate Order No. SEPA–65
Jim Woodruff Project Power Rates

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Section 302(a) of the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7152(a)), the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), relating to the Southeastern Power Administration (Southeastern), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated to the Administrator, Southeastern Power Administration, the authority to develop power and transmission rates, to the Deputy Secretary of Energy the authority to confirm, approve, and place such rates into effect on an interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place into effect on a final basis, or to disapprove, rates developed by the Administrator under the delegation. By Delegation Order No. S1–DEL–S4–2021, effective February 25, 2021, the Acting Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Science (and Energy). By Redelegation Order No. S4–DEL–OE1–2021, effective March 25, 2021, the Acting Under Secretary for Science (and Energy) redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. By Redelegation Order No. 00–002.10–03, effective July 8, 2020, the Assistant Secretary for Electricity further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Administrator, Southeastern Power Administration. This last redelegation, despite predating the February 2021 delegation and March 2021 redelegation, remains valid. This rate is confirmed, approved, and placed into effect on an interim basis by the Administrator, Southeastern Power Administration, pursuant to the authority delegated in Redelegation Order No. 00–002.10–03.

Background

Power from the Jim Woodruff Project is presently sold under Wholesale Power Rate Schedules JW–1–K and JW–2–F. These rate schedules were approved by FERC on October 20, 2016, for a period ending September 30, 2021 (157 FERC ¶ 62,043).

Public Notice and Comment

Notice of a proposed rate adjustment and opportunities for public review and comment for the Jim Woodruff Project was published in the **Federal Register** (86 FR 16717) on March 31, 2021. Southeastern proposed an increase and to extend existing schedules of rates and charges applicable to the sale of power from the Jim Woodruff Project to become effective October 1, 2021, through September 30, 2026. The notice advised interested parties that a public information and comment forum for this rate action would be held virtually by Microsoft Teams Meeting on May 11, 2021. Written comments were due on or before June 29, 2021.

The proposed rate schedule JW–1–L would increase the capacity charge from $7.74 per kilowatt per month to $8.46 per kilowatt per month. The energy charge would be increased from 20.44 mills per kilowatt-hour to 22.32 mills per kilowatt-hour. In addition to the capacity and energy charges, each preference customer would continue to be charged for power purchased by Southeastern on behalf of the preference customer. This pass-through would continue to be computed as described in the current rate schedules.

Rate schedule JW–2–F, available to Duke Energy Florida (DEF), would continue the current rate of 100 percent of DEF's fuel cost.

Public Comments

Southeastern received oral comments from two participants as part of the public information and comment forum on May 11, 2021. Southeastern received one written response to the ''Notice of proposed rates, public forum, and opportunities for public review and comment'' published in the **Federal Register** at 86 FR 16717 on March 31, 2021.

Oral Comment: [Commenter 1] I know that when we reviewed a lot of the revenue requirements—it's been a little over a month ago, the Jim Woodruff customers were very satisfied with the staff's presentations and the—all of the questions were answered in a satisfactory manner, so we have no follow-up questions at this time.

Oral Comment: [Commenter 2] A couple of questions. I believe it was stated earlier that there was a 7 percent drop in repayment from 2016 to 2020. Is that a simple function of revenues being insufficient due to low water years? Is there a sense in terms of why that—the repayment was off by 7 percent?

Oral Response: No, that is just the straight percentage when we compared what we used as estimates in the last rate adjustment study from 2016. We compared FY16 through FY20 estimates with the actuals, and that was just kind of an indication of the difference in what we estimated repayment to be with what was actually repaid.

Oral Comment: [Commenter 2] And then looking at the SEPA marketing expense, we note that there's a 13 percent increase between 2019 to 2020. If you compare 2019 through 2021, you have a 15 percent increase in the SEPA

marketing expense. Can you identify what's the cause of that in terms of SEPA's marketing expense?

Oral Response: Not at this time, but if you would email that question in, I could look into the details, but I don't have any detailed information for SEPA's expense right now. We can supplement the record later on with that response.

Oral Comment: [Commenter 2] I think if you look at form Exhibit 9, that's where we see—between 2019 and 2020, we had a—it's a pretty good jump there. Now, that could be a function of SEPA's expenses increasing because of remote work obligations, so there— anticipate there's a logical explanation there.

Oral Response: Yes. I just—I don't have the detailed breakdown of SEPA's expenses to tell you what area that would be in. But I will answer for the record.

Oral Comment: [Commenter 2] the other thing that I think we would note from a customer perspective is that we continue to monitor the amount of expense that is allocated as the joint O&M expense, and that continues to be a little bit of a concern in terms of whether costs are appropriately accounted for, for purposes of what hydropower should be bearing. We know that SEPA has been devoting a lot of energy to trying to make sure that the Corps is properly accounting for these expenses, so we support SEPA's efforts in this regard.

Oral Response: And we fully continue those efforts and hopefully we will accomplish some savings for the customers.

Combined Unanswered Oral Comments from Forum: And then looking at the SEPA marketing expense, we note that there's a 13 percent increase between 2019 to 2020. If you compare 2019 to 2021, you have a 15 percent increase in SEPA marketing expense. Can you identify what's the cause of that in terms of SEPA's marketing expense?

Response for the Record Submitted to Customers May 24, 2021: The change in SEPA marketing expense between Fiscal Years 2019 and 2020 is $18,000 for the Woodruff System. SEPA has identified just over $17,100 of the $18,000 as attributable to increases in Salaries, Benefits and Outside Contract Services. The increases are due to the transition of SEPA's Power System Dispatchers pay plan from the General Schedule to an Administratively Determined plan and a pay raise to the General Schedule federal employees. The cost of a survey for the Administratively Determined pay plan was charged to Outside Contract Services along with the annual financial audit and a cleaning service contract.

The change between Fiscal Years 2019 and 2021 of 15 percent is attributable to the 13 percent increase in Fiscal Year 2020 and the projected expense for Fiscal Year 2021 being calculated by using the federal budgetary inflation factor of 2 percent for future years.

Written Comment: The SeFPC supports the rate as proposed by the Southeastern Power Administration (''SEPA'').

While we believe that the rate fully captures costs associated with hydropower production, we nonetheless encourage SEPA to work with the U.S. Army Corps of Engineers (''Corps'') to ensure that joint operation and maintenance expenses do not include costs that should be assigned solely to project purposes unrelated to hydropower production. SEPA's continued diligence in working with the Corps will help ensure that rates remain as low as possible consistent with sound business principles.

Response: Southeastern continues to work with preference customers and the Corps to review operation and maintenance actual costs and estimates to ensure accuracy of cost assignment and projections to establish the lowest possible rates consistent with sound business principles within the meaning of Section 5 of the Flood Control Act of 1944.

Discussion

System Repayment

An examination of the Southeastern revised system power repayment study, prepared in March of 2021 for the Jim Woodruff Project, shows that with the proposed rates, all system power costs are paid within the appropriate repayment period and meet the cost recovery criteria set forth in DOE Order RA 6120.2. The Administrator of Southeastern Power Administration has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Legal Authority

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated to the Administrator, Southeastern Power Administration the authority to develop power and transmission rates, to the Deputy Secretary of Energy the authority to confirm, approve, and place such rates into effect on an interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place into effect on a final basis, or to disapprove, rates developed by the Administrator under the delegation. By Delegation Order No. S1–DEL–S4–2021, effective February 25, 2021, the Acting Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Science (and Energy). By Redelegation Order No. S4–DEL–OE1–2021, effective March 25, 2021, the Acting Under Secretary for Science (and Energy) redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. By Redelegation Order No. 00–002.10–03, effective July 8, 2020, the Assistant Secretary for Electricity further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Administrator, Southeastern Power Administration. This last redelegation, despite predating the February 2021 delegation and the March 2021 redelegation, remains valid. This rate is confirmed, approved, and placed into effect on an interim basis by the Administrator, Southeastern Power Administration, pursuant to the authority delegated in Redelegation Order No. 00–002.10–03.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, as amended, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Determination Under Executive Order 12866

Southeastern has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials, is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

Order

In view of the foregoing and pursuant to the authority redelegated to me by the

Assistant Secretary for Electricity, I hereby confirm and approve on an interim basis, effective October 1, 2021, attached Wholesale Power Rate Schedules JW–1–L and JW–2–F. The rate schedules shall remain in effect on an interim basis through September 30, 2026, unless such period is extended or until FERC confirms and approves them or substitute rate schedules on a final basis.

Signing Authority

This document of the Department of Energy was signed on August 12, 2021, by Virgil G. Hobbs III, Administrator for Southeastern Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 13, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

Wholesale Power Rate Schedule JW–1–L

Availability

This rate schedule shall be available to public bodies and cooperatives served by Duke Energy Florida and having points of delivery within 150 miles of the Jim Woodruff Project (hereinafter called the Project).

Applicability

This rate schedule shall be applicable to firm power and accompanying energy made available by the Government from the Project and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the customer.

Monthly Rate

The monthly rate for capacity and energy made available or delivered under this rate schedule shall be:

Demand Charge:

$8.46 per kilowatt of monthly contract demand.

Energy Charge: 22.32 mills per kilowatt-hour.

Purchased Power Pass-Through

In addition to the capacity and energy charges, each preference customer will be charged for power purchased by Southeastern on behalf of the preference customer. This pass-through will be computed as follows:

Each month, Duke Energy Florida provides Southeastern with the meter readings for preference customers' delivery points that have an allocation of capacity from Southeastern. Subsequently, Duke Energy Florida provides Southeastern with reports of purchased power and support capacity requirements around the 10th of the succeeding month. Southeastern computes its purchased power obligation for each delivery point monthly. Southeastern computes any revenue from sales to Duke Energy Florida for each delivery point monthly. Southeastern sums the purchased power obligation and any revenue from sales to Duke Energy Florida for each preference customer monthly. The purchased power obligation minus any revenue from sales to Duke Energy Florida for each customer is called the Net Purchased Power Cost. Southeastern charges each customer its respective monthly Net Purchased Power Cost in equal portions over the next eleven billing months.

Billing Demand

The monthly billing demand for any billing month shall be the lower of (a) the Customer's contract demand or (b) the sum of the maximum 30-minute integrated demands for the month at each of the Customer's points of delivery; provided, that, if an allocation of contract demand to delivery points has become effective, the 30-minute maximum integrated demand for any point of delivery shall not be considered to be greater than the portion of the Customer's contract demand allocated to that point of delivery.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy Made Available

During any billing month in which the Government supplies all the Customer's capacity requirements for a particular delivery point, the Government will make available the total energy requirement of said point. When both the Government and Duke Energy Florida are supplying capacity to a delivery point, each kilowatt of capacity supplied to such point during such month will be considered to be accompanied by an equal quantity of energy.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The customer shall, at its own expense, provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of Duke Energy Florida on its side of the delivery point.

Service Interruption

When energy delivered to the Customer's system for the account of the Government is reduced or interrupted for one hour or longer, and such reduction or interruption is not due to conditions on the Customer's system or has not been planned and agreed to in advance, the demand charge for the month shall be appropriately reduced.

October 1, 2021

Wholesale Power Rate Schedule JW–2–F

Availability

This rate schedule shall be available to Duke Energy Florida (formerly known as Florida Power Corporation, and hereinafter called the Company).

Applicability

This rate schedule shall be applicable to electric energy generated at the Jim Woodruff Project (hereinafter called the Project) and sold to the Company in wholesale quantities.

Points of Delivery

Power sold to the Company by the Government will be delivered at the connection of the Company's transmission system with the Project bus.

Character of Service

Electric power delivered to the Company will be three-phase alternating current at a nominal frequency of 60 cycles per second.

Monthly Rate

The monthly rate for energy sold under this schedule shall be equal to 100 percent of the calculated saving in

the cost of fuel per kWh to the Company determined as follows:

$$\text{Energy Rate} = 100\% \times \frac{\text{Fm}}{\text{Sm}}$$

[Computed to the nearest $0.00001 (1/100mill) per kWh]

Where:

Fm = Company fuel cost in the current period as defined in Federal Power Commission Order 517 issued November 13, 1974, Docket No. R–479.

Sm = Company sales in the current period reflecting only losses associated with wholesale sales for resale. Sale shall be equated to the sum of (a) generation, (b) purchases, (c) interchange-in, less (d) inter-system sales, less estimated wholesale losses (based on average transmission loss percentage for preceding calendar year).

Determination of Energy Sold

Energy will be furnished by the Company to supply any excess of Project use over Project generation. Energy so supplied by the Company will be deducted from the actual deliveries to the Company's system to determine the net deliveries for energy accounting and billing purposes. Energy for Project use shall consist of energy used for station service, lock operation, Project yard, village lighting, and similar uses.

The on-peak hours shall be the hours between 7:00 a.m. and 11:00 p.m., Monday through Sunday, inclusive. Off-peak hours shall be all other hours.

All energy made available to the Company shall, to the extent required, be classified as energy transmitted to the Government's preference customers served from the Company's system. All energy made available to the Company from the Project shall be separated on the basis of the metered deliveries to it at the Project during on-peak and off-peak hours, respectively. Deliveries to preference customers of the Government shall be divided on the basis (with allowance for losses) of 77 percent being considered as on-peak energy and 23 percent being off-peak energy. Such percentages may by mutual consent be changed from time to time as further studies show to be appropriate. In the event that in classifying energy there is more than enough on-peak energy available to supply on-peak requirements of the Government's preference customers but less than enough off-peak energy available to supply such customers' off-peak requirements, such excess on-peak energy may be applied to the extent necessary to meet off-peak requirements of such customers in lieu of purchasing deficiency energy to meet such off-peak requirements.

Billing Month

The billing month under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Power Factor

The purchaser and seller under this rate schedule agree that they will both so operate their respective systems that neither party will impose an undue reactive burden on the other.

October 1, 2021.

[FR Doc. 2021–17747 Filed 8–18–21; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of SFFAS 59, Accounting and Reporting of Government Land

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standards (SFFAS) 59, *Accounting and Reporting of Government Land.*

ADDRESSES: The issuance is available on the FASAB website at *https://fasab.gov/accounting-standards/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: 31 U.S.C. 3511(d), the Federal Advisory Committee Act, as amended (5 U.S.C. app.), and the FASAB Rules of Procedure, as amended in October 2010.

Dated: August 9, 2021.

Monica R. Valentine,

Executive Director.

[FR Doc. 2021–17798 Filed 8–18–21; 8:45 am]

BILLING CODE P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Privacy Act of 1974; System of Records

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of a new system of records.

SUMMARY: Federal Mediation and Conciliation Service (FMCS) uses photographs, biographies, and agency contact information of employees to provide background information to the public, for use by stakeholders in preparation for services, and for trainings and conferences. FMCS may also use these documents for internal agency events and communications.

DATES: This notice will be effective without further notice on September 20, 2021 unless otherwise revised pursuant to comments received. New routine uses will be effective on September 20, 2021. Comments must be received on or before September 20, 2021.

ADDRESSES: You may send comments, identified by FMCS–0003, by any of the following methods:

- *Mail:* Office of General Counsel, 250 E Street SW, Washington, DC 20427.
- *Email: ogc@fmcs.gov.* Include FMCS–0003 on the subject line of the message.
- *Fax:* (202) 606–5444.

FOR FURTHER INFORMATION CONTACT: Greg Raelson, Director of Congressional and Public Affairs, at *graelson@fmcs.gov,* 202–606–8081.

SUPPLEMENTARY INFORMATION: This new system is needed for collecting, storing and maintaining FMCS employee biographical information and FMCS employee and event photographs.

SYSTEM NAME AND NUMBER:

FMCS–0003

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Mediation and Conciliation Service, 250 E Street SW, Washington, DC 20427.

SYSTEM MANAGER(S):

Greg Raelson, Director of Congressional and Public Affairs, email *graelson@fmcs.gov,* or send mail to Federal Mediation and Conciliation Service, 250 E Street Southwest, Washington, DC 20427, Attn: Greg Raelson.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Mediation and Conciliation Service, 29 U.S.C. 172, *et seq.;* Departmental Regulations, 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

The purposes of the system are as follows:

(a) The records are used for internal and external communications, and to

provide the public with contact information and biographies of the employees who carry out FMCS's mission and activities.

(b) To digitize FMCS photographic files in support of preserving the materials.

(c) To be used for reproduction by FMCS employees organizing such events as awards, ceremonies, farewell ceremonies and receptions, FMCS anniversary ceremonies and receptions, conferences, workshops, speaking engagements, and FMCS training and education programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former FMCS employees, clients, visitors from other agencies, and members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of digital photographs, digitized images of photographic prints, negatives, and slides, and indexing data including name, geographical district, biographies, business title, business email, business cell phone and office number, business office address, business address of events, and dates of events.

RECORD SOURCE CATEGORIES:

Photographs and biographical information are provided by FMCS employees on an ongoing basis. Donors include FMCS employees, FMCS clients, and visitors from the public or other agencies. Other records such as contact information are obtained from FMCS records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Agency as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(a) As communication material at conferences, trainings, and speaking engagements where FMCS employees participate in their official capacity to demonstrate the experience and background of FMCS employees.

(b) To current and prospective FMCS clients including other federal agencies to provide background information on individuals for public knowledge and awareness.

(c) To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

(d) To respond to subpoenas in any litigation or other proceeding.

(e) For distribution and presentation for news, public relations, official agency social media, community affairs, and client services purposes.

(f) In support of research activities conducted by FMCS employees and other agencies.

(g) To appropriate agencies, entities, and persons when (1) FMCS suspects or has confirmed that there has been a breach of the system of records, (2) FMCS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, FMCS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FMCS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(h) To another Federal agency or Federal entity, when FMCS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored electronically on the public facing website located here. Also, records are stored on FMCS's shared and internal hard drives and on the FMCS's Microsoft Office 365 SharePoint site both accessible only to FMCS employees. Hard copies of photographs are also displayed in FMCS's offices.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records on the public facing website can be searched by name, geographic district, and zip code. Records on the FMCS's shared and internal drives can be searched by name, and date and name of the event. On SharePoint, records can be searched by the date and name of the event.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are updated as needed and retained until no longer needed for business use. All records are retained and disposed of in accordance with General Records Schedule 6.4, issued by the National Archives and Records Administration.

ADMINSTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records on FMCS's shared and internal drives, and on SharePoint are safeguarded in a secured environment and are maintained in a secure, password-protected electronic system that will utilize commensurate safeguards that may include firewalls, intrusion detection and prevention systems, and role-based access controls. Hard copy records are accessed in FMCS facilities that are limited to authorized personnel with official duties requiring access. FMCS facilities are equipped with security cameras and 24-hour security guard service. These records are kept in limited access areas in locked offices. All records are protected from unauthorized access through appropriate administrative, operational, and technical safeguards. These safeguards include restricting access to authorized personnel who have a ''need to know'', using locks, and password protection identification features.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURES:

See 29 CFR 1410.6, Requests for correction or amendment of records, on how to contest the content of any records. Privacy Act requests to amend or correct records may be submitted to the Chief Privacy Officer at *privacy@fmcs.gov* or Chief Privacy Officer, FMCS 250 E Street SW Washington, DC 20427. Also, see *https://www.fmcs.gov/privacy-policy/.*

NOTIFICATION PROCEDURES:

See 29 CFR 1410.3(a), Individual access requests.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Dated: August 16, 2021.

Sarah Cudahy,

General Counsel.

[FR Doc. 2021–17807 Filed 8–18–21; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank

Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 3, 2021.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Daniel Otten, Hayward, Minnesota;* to retain voting shares of Minnesota Community Bancshares, Inc., Albert Lea, Minnesota, and thereby indirectly retain voting shares of Arcadian Bank, Hartland, Minnesota.

B. *Federal Reserve Bank of Kansas City* (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Kathleen Sullivan, Cedar Rapids, Nebraska;* to join the Sullivan Family Group, a group acting in concert, to acquire voting shares of Cedar Rapids State Company, and thereby indirectly acquire voting shares of Cedar Rapids State Bank, both of Cedar Rapids, Nebraska.

Board of Governors of the Federal Reserve System, August 16, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–17817 Filed 8–18–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2021–0088]

Updating CDC's Contraception Guidance Documents: U.S. Medical Eligibility Criteria for Contraceptive Use and U.S. Selected Practice Recommendations for Contraceptive Use

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain comment on CDC's contraception recommendations. Two guidance documents, *U.S. Medical Eligibility Criteria for Contraceptive Use* (US MEC) and *U.S. Selected Practice Recommendations for Contraceptive Use* (US SPR), provide evidence-based recommendations to assist health care providers when counseling patients on contraceptive choice and use. Updates to these guidance documents typically occur every 5 years. As part of the planning process for the next update, CDC is requesting public comment on content to consider for revision or addition to the recommendations and how to improve the implementation of the guidance documents. This action is necessary to consider multiple and diverse perspectives and ensure that the documents meet the needs of U.S. health care providers and the persons they serve.

DATES: Written comments must be received on or before October 18, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0088 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* [insert complete mailing address, including mailstop]

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kathryn M. Curtis, Ph.D., Division of Reproductive Health, Centers for Disease Control and Prevention, 4770 Buford Highway NE, MS S107–2, Atlanta, GA 30341. Telephone: 770–488–5200. Email: *usmecspr@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. CDC invites comments specifically on the following questions:

1. Are there existing US MEC or US SPR recommendations that CDC should consider reviewing for possible *revision,* based on new evidence or other justification? Please provide references to new evidence and justification to support review of existing recommendations.
2. Are there new recommendations that CDC should consider adding to the US MEC? This could include eligibility criteria for contraceptive use among people with medical conditions or characteristics not currently included in the US MEC. Please provide references to supporting evidence, justification, and impact of new recommendations.
3. Are there new recommendations that CDC should consider adding to the US SPR? This could include clinical practice recommendations to address issues regarding initiation and use of specific contraceptive methods not currently included in the US SPR. Please provide references to supporting evidence, justification, and impact of new recommendations.
4. Are there other issues that should be considered or suggestions to improve implementation of the US MEC and US SPR recommendations to help ensure equitable access to contraceptive services (such as better ways of presenting the recommendations, additional job aids or tools for providers, broader dissemination and implementation strategies, inclusion of additional partners, etc.)? Please provide references to supporting evidence or justification.

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing

private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted in preparation of the final document.

In 2017–2019 in the United States, 65% of women aged 15–49 years used contraception; the most common contraceptive methods used were female sterilization, oral contraceptive pills, implants and intrauterine devices, and male condoms [1]. The majority (61%) of U.S. women aged 18–49 years have ongoing or potential need for contraceptive services [2]. Similarly, in 2010–2016, about 60% of men aged 15–44 years in the United States needed family planning [3]. Equitable access to evidence-based, high quality care is critical to meeting the needs of persons seeking contraceptive services, improving reproductive autonomy, and reducing unintended pregnancy in the United States [2].

Since 2010, CDC has published evidence-based recommendations on contraception provision. These recommendations are intended to assist health care providers when they counsel patients about choice and use of contraceptive methods, with the goal of reducing medical barriers to contraception access. *U.S. Medical Eligibility Criteria for Contraceptive Use, 2016* (US MEC) comprises recommendations for the use of specific contraceptive methods by persons with certain characteristics or medical conditions, such as diabetes, hypertension, and being postpartum or breastfeeding [4]. *U.S. Selected Practice Recommendations for Contraceptive Use, 2016* (US SPR) addresses common, yet sometimes complex, issues regarding initiation and use of specific contraceptive methods, such as examinations or tests needed before starting a method and management of side effects [5]. Both guidance documents are adapted from global guidance developed by the World Health Organization (WHO) and are based on review of the scientific evidence and consultation with national experts. CDC partners with other federal agencies and professional organizations in the development, dissemination, and implementation of the guidance documents to improve access to contraception and quality of family planning services.

CDC is committed to ensuring that the US MEC and US SPR recommendations are reviewed and updated as new scientific evidence becomes available. Working with WHO, CDC continuously monitors peer-reviewed literature and updates recommendations as needed, with comprehensive reviews approximately every 5 years. CDC is currently planning for the next update of the US MEC and US SPR and will consider public comments when determining the scope of the guidance update. CDC is seeking feedback from health care providers, professional organizations, community-based organizations, organizations that seek to improve reproductive health, patient advocacy groups, and the public.

The current US MEC may be found at the Supplementary Materials tab of the docket and at *https://www.cdc.gov/reproductivehealth/contraception/mmwr/mec/summary.html.* The current US SPR may be found at the Supplementary Materials tab of the docket and at *https://www.cdc.gov/reproductivehealth/contraception/mmwr/spr/summary.html.*

References

1. Daniels K, Abma JC. Current contraceptive status among women aged 15–49: United States, 2017–2019. NCHS Data Brief 2020:388;1–8.
2. Zapata LB, Pazol K, Curtis KM et al. Need for contraceptive services among women of reproductive age—45 jurisdictions, United States, 2017–2019. MMWR Morb Mortal Wkly Rep 2021;70:910–15.
3. Marcell AV, Gibbs SE, Choiriyyah I et al. National needs of family planning among US men aged 15 to 44 years. Am J Public Health 2016:106;733–9.
4. Curtis KM, Tepper NK, Jatlaoui TC, et al. U.S. medical eligibility criteria for contraceptive use, 2016. MMWR Recomm Rep 2016;65(RR–3):1–103.
5. Curtis KM, Jatlaoui TC, Tepper NK, et al. U.S. selected practice recommendations for contraceptive use, 2016. MMWR Recomm Rep 2016;65(RR–4):1–66.

Dated: August 16, 2021.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2021–17818 Filed 8–18–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Tribal Maternal, Infant, and Early Childhood Home Visiting Program: Guidance for Submitting an Annual Report to the Secretary (OMB #0970–0409)

AGENCY: Office of Child Care, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), Office of Child Care (OCC) is requesting a 3-year extension of the Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program: Guidance for Submitting an Annual Report to the Secretary (OMB #0970–0409; expiration 9/30/2021). There are minor updates to the annual guidance which reflects a change in timing for the due date of the final report.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: Section 511(e)(8)(A) of Title V of the Social Security Act requires that grantees under the MIECHV program for states and jurisdictions submit an annual report to the Secretary of Health and Human Services regarding the program and activities carried out under the program, including such data and information as the Secretary shall require. Section 511(h)(2)(A) further states that the requirements for the MIECHV grants to tribes, tribal organizations, and urban Indian organizations are to be consistent, to the greatest extent practicable, with the requirements for grantees under the MIECHV program for states and jurisdictions.

OCC, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau awarded grants for the Tribal MIECHV Program (Tribal Home Visiting) to support cooperative agreements to conduct community needs assessments; plan for and implement high-quality, culturally-relevant, evidence-based home visiting programs in at-risk tribal communities; establish, measure, and report on progress toward meeting performance measures in six legislatively-mandated benchmark areas; and conduct rigorous evaluation activities to build the knowledge base on home visiting among Native populations.

After the first grant year, Tribal Home Visiting grantees must comply with the requirement to submit an Annual Report to the Secretary that should feature activities carried out under the program during the past reporting period, and a final report to the Secretary during the final year of their grant. To assist grantees with meeting these requirements, ACF created guidance for grantees to use when writing their reports. The guidance specifies that grantees must address the following:

- Update on Home Visiting Program Goals and Objectives
- Update on the Implementation of Home Visiting Program in Targeted Community(ies)
- Progress toward Meeting Legislatively Mandated Benchmark Requirements
- Update on Rigorous Evaluation Activities
- Home Visiting Program Continuous Quality Improvement (CQI) Efforts
- Update on dissemination activities
- Administration of Home Visiting Program
- Technical Assistance Needs

Previously, the guidance included information about both the annual and the final reports from grantees. This extension request includes updates to the guidance to make it specific to just the annual reports. Guidance specific to the final report will be submitted for review and approval by OMB in the future. A comment period will accompany that request.

Respondents: Tribal Home Visiting Managers (information collection does not include direct interaction with individuals or families that receive the services).

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Annual Report to the Secretary	23	1	25	575

Estimated Total Annual Burden Hours: 575.

Authority: Title V of the Social Security Act, Sections 511(e)(8)(A) and 511(h)(2)(A).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–17773 Filed 8–18–21; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting: National Committee on Vital and Health Statistics

AGENCY: Centers for Disease Control and Prevention, Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting: National Committee on Vital and Health Statistics (NCVHS), Meeting of the Full Committee. This meeting is open to the public. The public is welcome to obtain the link to attend this meeting by following the instructions that will be posted here prior to the meeting: *https://ncvhs.hhs.gov/meetings/full-committee-meeting-8/*.

DATES: The meeting will be held Thursday, September 9, 2021: 10:30 a.m.–5:00 p.m. EST and Friday, September 10, 2021: 10:30 a.m.–5:00 p.m. EST

ADDRESSES: Virtual open meeting.

FOR FURTHER INFORMATION CONTACT: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, or via electronic mail to *vgh4@cdc.gov;* or by telephone (301) 458–4715. Summaries of meetings and a roster of Committee members are available on the home page of the NCVHS website, *https://ncvhs.hhs.gov/*, where further information including an agenda and instructions to access the broadcast of the meeting will be posted.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (770) 488–3210 as soon as possible.

SUPPLEMENTARY INFORMATION:

Purpose: As outlined in its Charter, the National Committee on Vital and Health Statistics assists and advises the Secretary of HHS on health data, data standards, statistics, privacy, national health information policy, and the Department's strategy to best address those issues. This includes the adoption and implementation of transaction standards, unique identifiers, operating rules and code sets adopted under the Health Insurance and Portability Act of 1996 (HIPAA).[1] At this meeting, the Committee will receive updates from HHS officials, hold discussions on current health data policy topics, and discuss its work plan for the upcoming period.

The Subcommittee on Standards will bring forward a letter that outlines a set of recommendations for HHS actions regarding the 11th Revision of the International Classification of Diseases (ICD–11) for the Committee's consideration. In addition, the Subcommittee will update the full Committee on the August 25 Listening Session on Healthcare Standards Development, Adoption and Implementation, and how the input received from that session, as well as from an extended public comment period, is informing the Subcommittee's ''Convergence 2.0'' project. The Subcommittee on Privacy, Confidentiality & Security will update the Committee regarding the July 14 hearing on Security in Healthcare and on its project to examine considerations for data collection and use during a public health emergency. The Committee also will discuss a potential project that would assess current standards and practices for reporting race and ethnicity data and sexual orientation and gender identity (SOGI) data.

The Committee will reserve time for public comment toward the end of the schedule on both days. Meeting times and topics are subject to change. Please refer to the agenda posted at the NCVHS website for this meeting *https://ncvhs.hhs.gov/meetings/full-committee-meeting-8/* for any updates.

Sharon Arnold,

Associate Deputy Assistant Secretary for Planning and Evaluation, Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2021–17809 Filed 8–18–21; 8:45 am]

BILLING CODE 4150–05–P

[1] Public Law 104–191, 110 Stat. 1936 (Aug 21, 1996), available at *https://www.congress.gov/104/plaws/publ191/PLAW-104publ191.pdf.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Viravuth Yin, Ph.D. (Respondent), former Associate Professor, Mount Desert Island Biological Laboratory (MDIBL). Respondent engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grants P20 GM104318 and P20 GM103423. The administrative actions, including supervision for a period of two (2) years, were implemented beginning on August 2, 2021, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr.P.H., Acting Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Viravuth Yin, Ph.D., Mount Desert Island Biological Laboratory: Based on the report of an investigation conducted by MDIBL and analysis conducted by ORI in its oversight review, ORI found that Dr. Viravuth Yin, former Associate Professor, MDIBL, engaged in research misconduct in research supported by PHS funds, specifically NIGMS, NIH, grants P20 GM104318 and P20 GM103423.

Respondent neither admits nor denies ORI's findings of research misconduct. The settlement is not an admission of liability on the part of the Respondent. The parties entered into a Voluntary Settlement Agreement to conclude this matter without further expenditure of time, finances, or other resources.

ORI found that Respondent engaged in research misconduct by knowingly, intentionally, and/or recklessly falsifying and/or fabricating data included in the following three (3) published papers and two (2) submitted manuscripts:

- Smith AM, Dykeman CA, King BL, Yin VP. Modulation of TNFα Activity by the microRNA Let-7 Coordinates Heart Regeneration. *iScience* 2019;15:1–15; doi: 10.1016/j.isci.2019.04.009 (hereafter referred to as ''*iScience* 2019'').
- Smith AM, Dykeman CA, King BL, Yin VP. Modulation of TNFα Activity by the microRNA Let-7 Coordinates Heart Regeneration. *iScience* 2019;17:225–29; doi: 10.1016/j.isci.2019.06.017 (hereafter referred to as ''*iScience* Correction'').
- Beauchemin M, Smith A, Yin VP. Dynamic microRNA–101a and Fosab expression controls zebrafish heart regeneration. *Development* 2015;142:4026–37; doi: 10.1242/dev.126649 (hereafter referred to as ''*Development* 2015'').
- Smith AM, Dykeman CA, Yin VP. Modulation of epicardial TNFα Activity by the microRNA Let-7 Coordinates the Zebrafish Heart Regeneration. Manuscript submitted to *iScience* in 2018 (hereafter referred to as ''*iScience* 2018 draft'').
- Smith AM, Dykeman CA, Yin VP. Modulation of epicardial TNFα Activity by the microRNA let-7 coordinates the zebrafish heart regeneration. Manuscript submitted to *PNAS* in 2018 (hereafter referred to as ''*PNAS* 2018 draft'').

Specifically, Respondent intentionally, knowingly, and/or recklessly falsified and/or fabricated data by:

- Reusing, relabeling, and reporting Phosphate Buffered Saline (PBS) controls as scrambled antisense Locked Nucleic Acids (LNAs) in the following experimental results:

—RT-qPCR data representing the knockdown of let7 expression in Figure 2B of *PNAS* 2018 draft, *iScience* 2018 draft, and *iScience* 2019

—images of tcf21:Dsred expression in LNA-let-7 treated hearts at 3, 14, and 21 days post- amputation (dpa) showing defects in wound closure in Figure 2C of *PNAS* 2018 draft, *iScience* 2018 draft, and *iScience* 2019

—quantification of tcf21:Dsred expression within the resection wound in LNA-let-7 treated hearts in Figure 2D of *iScience* 2019

—images exhibiting proliferating cardiac muscle (CM) in Figure 3A of *PNAS* 2018 draft, *iScience* 2018 draft, and *iScience* 2019

—suppression of CM proliferation indices in LNA-let-7 hearts at 3 and 7 dpa in Figure 3B of *PNAS* 2018 draft, *iScience* 2018 draft, and *iScience* 2019

—severity of the injured heart phenotype in Figure 3C of *PNAS* 2018 draft, *iScience* 2018 draft, and *iScience* 2019

—quantification of the severity of the injury heart phenotype in Figure 3D of *iScience* 2019

—electron microscopy images of remote and injury zones of resected 7-dpa hearts in Figure 4A of *PNAS* 2018 draft, *iScience* 2018 draft, *iScience* 2019, and *iScience* Correction

—images of Tg(gata4:GFP) expression in the primordial heart muscle layer in Figure 4B of *PNAS* 2018 draft, *iScience* 2018 draft, *iScience* 2019, and *iScience* Correction

—quantification of gata4:GFP expression in control and LNA-let-7 treated hearts in Figure 4C of *iScience* 2019 and *iScience* Correction

—RNA transcripts identifying differentially upregulated TNFα transcripts in Figure 5A of *PNAS* 2018 draft, *iScience* 2018 draft, *iScience* 2019, and their resultant qPCR results, which identified increased TNFα expression in Figure 5C of *PNAS* 2018 draft, Figure 5B of *iScience* 2018 draft, *iScience* 2019, and Table S1 of *iScience* 2019

—CM proliferation analyses results in Figures S4B and S4C of *PNAS* 2018 draft and *iScience* 2018 draft, and Figures S5B and S5C of *iScience* 2019

—images representing the function of let-7 in Figure 2C of *iScience* Correction and reusing and relabeling images from an unrelated experiment, such that let-7 function is not represented in the image

—images reporting the function of let-7 in Figure 3A of *iScience* Correction

—images representing differences in the effects of miR–101a depletion on Met2 and PNA expression and the quantification of cardiomyocyte proliferation in uninjured control and *Tg(hs:miR-101a-sp)* heat exposed hearts (CM proliferation analysis) in Figures 2A, 2B, 2C, and 2D, and results in Figure 2E of *Development* 2015

—muscle, fibrin, and collagen staining images representing increased scar tissue presence in *Tg*(*hs:miR-101a-sp)* heat-treated hearts, as compared to wild type hearts in Figures 3A, 3B, 3C, 3D, 3E, and 3F of *Development* 2015

—scarring indices and the size of the injured area in wild type versus *Tg(hs:miR-101a-sp)* heat-treated hearts in Figures 3G and 3H of *Development* 2015

—differences in (1) the amount of scarring, as represented by AFOG staining in control and *Tg (hs:miR-101-a-sp)* ventricles from resected and heat-treated hearts in Figures 4B and 4C; (2) the amount of scar tissue in the presence of suppressed miR-101a expression in *Tg(hs:miR-101a-sp)* hearts, compared to control hearts in Figures 4H and 4I; and (3) the quantification of the scarring indices

in control versus *Tg(hs:miR-101a-sp)* hearts in Figure 4J of *Development* 2015

—differences in (1) the amount of scarring, as represented by comparing AFOG staining in control and *Tg(hs:miR-101a-sp)* and *Tg(hs:miR-133a1-pre)* hearts exposed to long term heat therapy in Figures 5A, 5B and 5C, or Tropomyosin staining in Figures 5D, 5E, and 5F; and (2) the quantification of the scarring indices, tropomyosin expression, and injury area in Figures 5G, 5H, and 5I of *Development* 2015

—increased Fosab expression in *Tg(hs:miR-101a-sp*) ventricles relative to controls in Figures 6A and 6B, RNA *in situ* hybridization studies in control and regenerating hearts detecting miR-101a expression in Figures 6C, 6D, 6E, and 6E', and Fosab expression in Figures 6F, 6G, 6H, and 6H' of *Development* 2015

—images reporting significant differences in Dsred expression, cardiomyocyte proliferation, collagen and fibrin staining, and scar tissue removal in ventricles from zebrafish treated with lna-Let-7, as compared to scrambled control, to support the importance of miR-101a in scar tissue removal/ventricular regeneration in Figures 6H, 6I, 6J, 7C, 7D, and 7E of *Development* 2015

• reporting research methods and statistics that were not performed in the following experimental results:

—PCR data in the graph represented in Figure 2B of *PNAS* 2018 draft, *iScience* 2018 draft, and *iScience* 2019, by representing the data from two (2) remote PCR experiments as being from the same experiment

—PCR data in the graph represented in Figure 2B of *iScience* Correction by reusing and relabeling a graph containing data that were the result of different experimental conditions (exposure to heat shock), to include scrambled control data

—control data and statistical differences between control and experimental data represented in *PNAS* 2018 draft, *iScience* 2018 draft, *iScience* 2019, and *iScience* Correction, by falsely reporting the use of both antisense scrambled and LNA oligonucleotides that were designed and administered to adult animals via intraperitoneal injection at 10ug/g body weight

—representing the ''n'' of one biological replicate or one experiment as being multiple independent samples or experiments in *iScience* 2019 and *iScience* Correction

—control data and statistical differences between control and experimental data and the reported methods in *Development* 2015, concluding that miR-101a controls both CM proliferation and scar tissue removal, by falsely reporting the use of LNA oligonucleotides to modulate miR-101 activity *in vivo* to elucidate its contributions during adult heart regeneration

Dr. Yin entered into a Voluntary Settlement Agreement (Agreement) and voluntarily agreed to the following:

(1) Respondent agreed to have his research supervised for a period of two (2) years beginning on August 2, 2021. Respondent agreed that prior to submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval. The supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution. Respondent agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI. Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan.

(2) The requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance for a period of two (2) years from the effective date of the Agreement. The committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

ii. The committee will conduct an advance review of any PHS grant applications (including supplements, resubmissions, etc.), manuscripts reporting PHS-funded research submitted for publication, and abstracts. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application/publication is supported by the research record.

(3) Respondent agreed that for a period of two (2) years beginning on August 2, 2021, any institution employing him shall submit, in conjunction with each application of PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript or abstract.

(4) If no supervisory plan is provided to ORI, Respondent agreed to provide certification to ORI at the conclusion of the supervision period that he has not engaged in, applied for, or had his name included on any application, proposal, or other request for PHS funds without prior notification to ORI.

(5) Respondent agreed to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of two (2) years, beginning on August 2, 2021.

(6) As a condition of the Agreement, Respondent will request that the following papers be retracted in accordance with 42 CFR 93.407(a)(1) and § 93.411(b):

• *Development* 2015 Dec 1;142(23):4026–37
• *iScience* 2019 May 31;15:1–15
• *iScience* 2019 Jul 26;17:225–29

Respondent will copy ORI and the Research Integrity Officer at MDIBL on the correspondence.

Dated: August 16, 2021.

Wanda K. Jones,

Acting Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2021–17777 Filed 8–18–21; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the

Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: November 10, 2021.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Cancer Institute, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Sheila A. Prindiville, M.D., M.P.H., Director, Coordinating Center for Clinical Trials, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 16, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–17821 Filed 8–18–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Environmental Health Sciences Council, September 13, 2021, 11:00 a.m. to September 14, 2021, 04:45 p.m., National Institute of Environmental Health Science, Durham, NC 27709 which was published in the **Federal Register** on August 16, 2021, FR Doc 2021–17410, 86 FR 45742.

This notice is being amended to change the meeting date from September 13–14, 2021 to September 13, 2021. The start time for open session is also amended and will now start at 11:45 a.m. and adjourn at 5:15 p.m. The meeting is partially closed to the public.

Dated: August 16, 2021.

David Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–17819 Filed 8–18–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–5: NCI Clinical and Translational Cancer Research.

Date: October 6–7, 2021.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Shree Ram Singh, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–672–6175, *singhshr@mail.nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group; Career Development Study Section (J).

Date: October 12–13, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Tushar Deb, Ph.D., Scientific Review Officer, Resources & Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850, 240–276–6132, *tushar.deb@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Strengthening Institutional Capacity to Conduct Global Cancer Research in Low- and Middle-Income Countries.

Date: October 12, 2021.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Shree Ram Singh, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–672–6175, *singhshr@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Review of Informatics Technology in Cancer Research.

Date: October 14–15, 2021.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W640, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Saejeong J. Kim, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W640, Rockville, Maryland 20850, 240–276–7684, *saejeong.kim@nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group; Institutional Training and Education Study Section (F).

Date: October 18–19, 2021.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W234, Rockville, Maryland 20850, 240–276–6368, *Stoicaa2@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Centers on Telehealth Research for Cancer-Related Care (P50 Clinical Trial Required).

Date: October 20–21, 2021.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W108, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special

Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W108, Rockville, Maryland 20850, 240–276–6343, *schweinfestcw@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project IV.

Date: November 2–3, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850, 240–276–6457, *mh101v@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–11: NCI Clinical and Translational Cancer Research.

Date: November 9, 2021.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W542, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Biman Chandra Paria, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive, Room 7W542, Rockville, Maryland 20850, 240–276–6454, *pariab@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Exercise and Nutrition Interventions to Improve Cancer Treatment-Related Outcomes (ENICTO) in Cancer Survivors Consortium (U01–U24).

Date: November 10, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850, 240–276–6611, *mukesh.kumar3@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Novel Technologies for Global Health.

Date: November 10, 2021.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W114, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W114, Rockville, Maryland 20850, 240–276–6371, *decluej@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Oncology Co-Clinical Imaging Research Resources to Encourage Consensus on Quantitative Imaging Methods and Precision Medicine (U24—Clinical Trial Optional).

Date: November 15, 2021.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Michael E. Lindquist, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W634, Rockville, Maryland 20850, *mike.lindquist@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Revision Applications for Mechanisms of Cancer Drug Resistance.

Date: November 16, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–276–5085, *tandlea@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Assay Validation of High-Quality Markers for Clinical Studies in Cancer (UH2/UH3).

Date: November 17, 2021.

Time: 10:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: John Paul Cairns, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850, 240–276–5415, *paul.cairns@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI U01 Review: Integrating Biospecimen Science Approaches into Clinical Assay.

Date: November 18, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W116, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Klaus B. Piontek, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W116, Rockville, Maryland 20850, 240–276–5413, *klaus.piontek@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 16, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–17820 Filed 8–18–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; ESTEEMED Research Education Experiences (R25) Program Review SEP.

Date: November 4, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dennis Hlasta, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 451–4794, *dennis.hlasta@nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 NCBIB Review C–SEP.

Date: November 8–10, 2021.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Plaza, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 959, Bethesda, MD 20892, (301) 451–3397, *sukharem@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, HHS)

Dated:August 13, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–17748 Filed 8–18–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20EG31DW50100; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Hydrography Addressing Tool

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*), we, the U.S. Geological Survey (USGS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before September 20, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Michael Tinker by email at *mdtinker@usgs.gov,* or by telephone at 303–202–4476. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.* Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 3, 2021, (86 FR 8030). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract

The Hydrography Addressing Tool (HydroAdd) is a web tool built by the USGS National Geospatial Program (NGP). HydroAdd will support users by providing a mechanism for referencing, or addressing, diverse external datasets to the National Hydrography Dataset (NHD). As an example, a user could use HydroAdd to reference the geographic locations and other details of field observations of fish presence to the NHD. HydroAdd will provide a framework for the management of addressed data, as well as enable upstream and down-stream analyses within the context of the stream network itself. Any type of information could be addressed to the stream network in this way, making this tool highly useful for a broad range of purposes that benefit the Nation.

HydroAdd users will be Federal employees, such as USGS or other Department of the Interior (DOI) employees; or members of the public, such as state, local, private sector, academic, or other users with knowledge of GIS and knowledge of how to create a web feature service. HydroAdd allows users to edit the geometry of the features in their web feature services to be coincident with NHD features. Users cannot edit the NHD with HydroAdd as it is displayed in the application as a read-only reference layer. Users must make their own datasets available to HydroAdd as a web feature service, either from their own server hardware or from a third-party service, and all edits take place in their own web feature service.

To use HydroAdd, users must register a user account profile which contains their business email and username. This information is stored in the application database. A user's profile is visible only to themselves and by HydroAdd administrators. HydroAdd administrators are a limited group of USGS staff. User accounts are important because they enable HydroAdd administrators to contact and help the user if needed, help to protect the user's data from edit by anyone who is not the user, and enable tracking on the editing history for the datasets through reporting.

HydroAdd administrators also have access to reporting functions. The reports detail the edit history of the service layer. User profiles are visible in these reports. Standard editors do not have access to the reporting functions.

Title of Collection: Hydrography Addressing Tool.

OMB Control Number: 1028–NEW.

Form Number: NA.

Type of Review: NEW.

Respondents/Affected: Public USGS Water Scientists, NHD stewards and editors affiliated with Federal, State, Local governments, and universities.

Total Estimated Number of Annual Respondents: 100.

Total Estimated Number of Annual Responses: 100.

Estimated Completion Time per Response: 1 minute.

Total Estimated Number of Annual Burden Hours: 2 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: one time, or as needed if respondent business contact information changes.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

David Brostuen,

Director, National Geospatial Technical Operations Center.

[FR Doc. 2021–17768 Filed 8–18–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLHQ310000.L13100000.PP0000; OMB Control No. 1004–0162]

Agency Information Collection Activities; Onshore Geophysical Exploration

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 20, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Jennifer Spencer by email at *j35spenc@blm.gov,* or by telephone at 202–912–7146. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 18, 2021 (86 FR 26938). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This information collection pertains to onshore geophysical exploration on Federal lands. Federal land-management agencies are responsible for regulating geophysical exploration on the Federal surface estate. The BLM regulates exploration for oil and gas on lands it manages, and on occasion regulates such exploration on lands managed by other Federal land-management agencies. The U.S. Forest Service (USFS) regulates exploration for various types of minerals, including oil and gas, on lands it manages. The BLM and the USFS propose to revise the accuracy and usefulness of the forms they use for this collection of information. OMB Control Number 1004–0162 is currently scheduled to expire on October 31, 2021. The BLM is requesting that OMB renew this Control Number for an additional three years.

Title of Collection: Onshore Geophysical Exploration (43 CFR part 3150 and 36 CFR parts 228 and 251).

OMB Control Number: 1004–0162.

Form Numbers: BLM Form 3150–4/FS Form 2800–16 and BLM Form 3150–5/FS Form 2800–16a.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: The respondents for this collection of information are businesses that seek to conduct geophysical exploration on Federal lands.

Total Estimated Number of Annual Respondents: 68.

Total Estimated Number of Annual Responses: 68.

Estimated Completion Time per Response: Varies from 20 minutes to 1 hour, depending on activity.

Total Estimated Number of Annual Burden Hours: 26.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: $25.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not

required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin King,

Information Collection Clearance Officer.

[FR Doc. 2021–17778 Filed 8–18–21; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA942000 L57000000.BX0000 20XL5017AR; MO#4500150559]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), California State Office, Sacramento, California, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the United States Forest Service and the BLM, are necessary for the management of these lands.

DATES: Unless there are protests to this action, the plats described in this notice will be filed on September 20, 2021.

ADDRESSES: You may submit written protests to the BLM California State Office, Cadastral Survey, 2800 Cottage Way, W–1623, Sacramento, CA 95825. A copy of the plats may be obtained from the BLM California State Office, Public Room, 2800 Cottage Way, W–1623, Sacramento, California 95825, upon required payment.

FOR FURTHER INFORMATION CONTACT: Jon Kehler, Chief, Branch of Cadastral Survey, Bureau of Land Management, California State Office, 2800 Cottage Way, W–1623, Sacramento, California 95825; 1–916–978–4323; *jkehler@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Kehler during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Mount Diablo Meridian, California

Township. 13 S, Range 35 E, dependent resurvey, for Group No. 1775, accepted August 7, 2020.

Township. 8 S, Range 31 E, dependent resurvey, subdivision of section 20 and metes-and-bounds survey, for Group No. 1748, accepted August 7, 2020.

Townships 10 & 11 S, Range 3 W, metes-and-bounds survey, for Group No. 1770, accepted November 5, 2020.

Township. 25 N, Range 5 E, dependent resurvey, for Group No. 1729, accepted November 6, 2020.

A person or party who wishes to protest one or more plats of survey must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. Any notice of protest received after the due date will be untimely and will not be considered. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed at the same address within 30 calendar days after the notice of protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available at any time. While you can ask the BLM to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C., Chapter 3)

Jon L. Kehler,

Chief Cadastral Surveyor.

[FR Doc. 2021–17776 Filed 8–18–21; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–32446; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before August 7 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by September 3, 2021.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before August 7, 2021. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

KEY: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

ARKANSAS

Conway County

I–40 Overpass, Fish Lake Rd. over I–40, Blackwell, SG100006920

Drew County

Arkansas Agricultural and Mechanical College Student Union, 346 University Dr., Monticello, SG100006921

Garland County

Jackson, Dr. Will W. and Helen B., House, 132 Lake Hamilton Dr., Hot Springs, SG100006923

Independence County

Batesville Overpass, AR 233 over Union Pacific RR and Miller Cr., Batesville, SG100006924

Monroe County

United States Post Office, 201 North Main St., Brinkley, SG100006925

Polk County

Heathcliff Cabin, East End of Maintenance Ln., Mena vicinity, SG100006926

Pope County

Russellville West Overpass, US 64 (West Main St.) over the Union Pacific RR Line, Russellville, SG100006927

Prairie County

Des Arc High School Home Economics Building, (New Deal Recovery Efforts in Arkansas MPS), 708 Main St, Des Arc, MP100006928

Pulaski County

Kerby, Alton and Ruby Mae, House, 532 Skyline Dr., North Little Rock, SG100006929

Veterans Administration Hospital

(United States Third Generation Veterans Hospitals, 1946–1958 MPS), 300 East Roosevelt Rd., Little Rock, MP100006930

Stone County

Lancaster, Albert and Almeda, House, 306 East Main St., Mountain View, SG100006931

Union County

Rock Island Railroad Overpass, US 82 (East Hillsboro St.) over Union Pacific RR Line, El Dorado, SG100006932

Washington County

Anderson-Taylor House, 1599 West Halsell Rd., Fayetteville, SG100006933

CALIFORNIA

Orange County

Consolidated Orange Growers Precooling & Ice Plant, 160 South Cypress St., Orange, SG100006912

San Bernardino County

Ontario Baseball Park, SE of North Grove Ave. and East 4th St. intersection (NE corner John Galvin Park), Ontario, SG100006913

San Francisco County

Hobart Building, 582–592 Market St., San Francisco, SG100006911

Sonoma County

Flamingo Hotel, 2777 4th St., Santa Rosa, SG100006937

GEORGIA

Pulaski County

R. J. Taylor Memorial Hospital, 161 Commerce St., Hawkinsville, SG100006907

IOWA

Allamakee County

Yellow River State Forest Fire Tower, Fire Tower Rd., Yellow River State Forest, Harpers Ferry vicinity, SG100006909

MICHIGAN

Allegan County

Wayland Downtown Historic District, Generally Main St. Between Maple and Pine Sts., and Superior St. Between Church and Forest Sts., Wayland, SG100006916

Marquette County

Negaunee Downtown Historic District_, Generally, Peck St. to Rail St. and Tobin St. to North Teal Lake Ave., Negaunee, SG100006934

MISSISSIPPI

Hinds County

Building at 733 North State Street, 733 North State St., Jackson, SG100006899

Lee County

Baldwyn Medical Group, 300 Mill St., Baldwyn, SG100006895

MISSOURI

Jackson County

Sanford B. Ladd School, (Kansas City, Missouri School District Pre-1970 MPS), 3640 Benton Bvld., Kansas City, MP100006918

NORTH CAROLINA

Buncombe County

South Asheville Cemetery and St. John 'A' Baptist Church, 20 Dalton St., Asheville, SG100006903

Graham County

Robbinsville Downtown Historic District, North and South Main St., Moose Branch Rd., Dula St., Laura St., Circle St., and East Main St., Robbinsville, SG100006902

OHIO

Hamilton County

Mercantile Library Building, 414 Walnut St., Cincinnati, SG100006914

OKLAHOMA

Oklahoma County

Jurhee Apartments, 1312–1316_North Francis Ave., Oklahoma City, SG100006905

Pachyderm Building for the Lincoln Park Zoo, 2000 Remington Place, Oklahoma City, SG100006906

PUERTO RICO

Adjuntas Municipality

Carretera Num. 6, Road #6, Adjuntas, SG100006919

Arecibo Municipality

Carretera Num. 6, Road #6, Arecibo vicinity, SG100006919

Ponce Municipality

Carretera Num. 6, Road #6, Ponce vicinity, SG100006919

Utuado Municipality

Carretera Num. 6, Road #6, Utuado vicinity, SG100006919

UTAH

Cache County

Watterson, William, Jr., and Caroline, House, 449 West 100 North, Logan, SG100006917

Borden Company Plant, 290 South 400 West, Logan, SG100006935

Utah County

Amanda Knight Hall, 42 East 800 North, Provo, SG100006910

VIRGINIA

Westmoreland County

Colonial Beach Commercial Historic District, Colonia Ave from Lynnhaven Ave to Potomac R.; Washington Ave. from Boundary St., Irving Ave., Wilder Ave, and Hawthorn St.; and Boundary Ave to Beach Terrace from Hawthorn St. with exclusions. Colonial Beach, SG100006984

WASHINGTON

King County

University National Bank Building, 4500 University Way NE, Seattle, SG100006904

Hotel Sorrento, 900 Madison St., Seattle, SG100006936

WISCONSIN

Winnebago County

Smith School, 1745 Oregon St., Oshkosh, SG100006898

An owner objection has been received for the following resource:

CALIFORNIA

Los Angeles County

Fairfax Theatre, 7901–09 Beverly Blvd., 301–21 Fairfax Ave., Los Angeles, SG100006908

A request to move has been received for the following resource:

VERMONT

Addison County

New Haven Junction Depot, North St., New Haven, MV78000226

Additional documentation has been received for the following resources:

ARKANSAS

Garland County

Perry Plaza Court Historic District (Additional Documentation), (Arkansas Highway History and Architecture MPS), 1007 Park Ave., Hot Springs, AD04000012

INDIANA

Vanderburgh County

Evansville Downtown Historic District (Additional Documentation), Roughly Main St. between 2nd St. and Martin Luther King Jr. Blvd., 4th St., between Sycamore and Chestnut Ss., Evansville, AD00000197

Busse House (Additional Documentation), (Downtown Evansville MRA), 120 SE 1st St., Evansville, AD82000084

Cadick Apartments (Plaza Building) (Additional Documentation), (Downtown Evansville MRA), 118 SE 1st St., Evansville, AD82000085

Central Library (Additional Documentation), (Downtown Evansville MRA), 22 SE 5th St., Evansville, AD82000086
Citizens National Bank (Additional Documentation), (Downtown Evansville MRA), 329 Main St., Evansville, AD82000087
Evansville Furniture Exchange-Court Building (Additional Documentation), (Downtown Evansville MRA), 123–125 NW 4th St., Evansville, AD82000088
Eagles Home (Additional Documentation), (Downtown Evansville MRA), 221 NW 5th St., Evansville, AD82000090
Evansville Brewing Company (Additional Documentation), (Downtown Evansville MRA), 401 NW 4th St., Evansville, AD82000091
Evansville Journal News (Additional Documentation), (Downtown Evansville MRA), 7–11 NW 5th St., Evansville, AD82000092
Albion Flats (Additional Documentation), (Downtown Evansville MRA), 701 Court St., Evansville, AD82000093
American Trust and Savings Bank (Indiana Bank) (Additional Documentation), (Downtown Evansville MRA), 524–530 Main St, Evansville, AD82000094
Geiger, Fred, and Sons National Biscuit Company (Additional Documentation), (Downtown Evansville MRA), 401 NW 2nd St, Evansville, AD82000096
German Bank (Additional Documentation), (Downtown Evansville MRA), 301–303 Main St., Evansville, AD82000097
Harding and Miller Music Company (Additional Documentation), (Downtown Evansville MRA), 518–520 Main St., Evansville, AD82000098
Indiana Bell Building (Additional Documentation), (Downtown Evansville MRA), 129–133 NW 5th St., Evansville, AD82000103
Ingle Terrace (Additional Documentation), (Downtown Evansville MRA), 609–619 Ingle St., Evansville, AD82000104
Leich, Charles, and Company (Additional Documentation), (Downtown Evansville MRA), 420 NW 5th St., Evansville, AD82000106
Masonic Temple (Additional Documentation), (Downtown Evansville MRA), 301 Chestnut St., Evansville, AD82000108
McCurdy Hotel (Additional Documentation), (Downtown Evansville MRA), 101–111 SE 1st St., Evansville, AD82000109
Montgomery Ward Building (Additional Documentation), (Downtown Evansville MRA), 517 Main St., Evansville, AD82000110
Hulman Building [Morris Plan (Central Union Bank)] (Additional Documentation), (Downtown Evansville MRA), 20 NW 4th St., Evansville, AD82000111
National City Bank (Additional Documentation), (Downtown Evansville MRA), 227 Main St., Evansville, AD82000112
Newman, M. G., Building (Additional Documentation), (Downtown Evansville MRA), 211–213 SE 4th St., Evansville, AD82000113
O'Donnell Building (Additional Documentation), (Downtown Evansville MRA), 22 NW 6th St., Evansville, AD82000115
Parson and Scoville Building (Additional Documentation), (Downtown Evansville MRA), 915 Main St., Evansville, AD82000117
Puster, L., and Company Furniture Manufactory (Additional Documentation), (Downtown Evansville MRA), 326 NW 6th St., Evansville, AD82000118
Rose Terrace (Additional Documentation), (Downtown Evansville MRA), 301–313 NW 7th St., Evansville, AD82000120
Salem's Baptist Church (Additional Documentation), (Downtown Evansville MRA), 728 Court St., Evansville, AD82000121
Siegel's Department Store (Additional Documentation), (Downtown Evansville MRA), 101–105 SE 4th St., Evansville, AD82000122
St. John's Evangelical Protestant Church (Additional Documentation), (Downtown Evansville MRA), 314 Market St., Evansville, AD82000123
Victory Theater and Hotel Sonntag (Additional Documentation), (Downtown Evansville MRA), 600–614 Main St., Evansville, AD82000124
Van Cleave Flats (Additional Documentation), (Downtown Evansville MRA), 704–708 Court St., Evansville, AD82000125
YMCA (Additional Documentation), (Downtown Evansville MRA), 203 NW 5th St., Evansville, AD82000128
Zion Evangelical Church (Additional Documentation), (Downtown Evansville MRA), 415 NW 5th St., Evansville, AD82000129
YWCA (Additional Documentation), (Downtown Evansville MRA), 118 Vine St., Evansville, AD82001853
Auto Hotel Building (Additional Documentation), (Downtown Evansville MRA), 111–115 SE 3rd St., Evansville, AD84001673
Barrett's Britz Building (Additional Documentation), (Downtown Evansville MRA), 415 Main St., Evansville, AD84001679
Fellwock Garage (Additional Documentation), (Downtown Evansville MRA), 315 Court St., Evansville, AD84001701
Firestone Tire and Rubber Store (Additional Documentation), (Downtown Evansville MRA), 900 Main St., Evansville, AD84001702
Huber Motor Sales Building (Additional Documentation), (Downtown Evansville MRA), 215–219 SE 4th St., Evansville, AD84001715
Old Fellwock Auto Company (Additional Documentation), (Downtown Evansville MRA), 214 NW 4th St., Evansville, AD84001735
Pearl Steam Laundry (Additional Documentation), (Downtown Evansville MRA), 428 Market St., Evansville, AD84001738
Roelker, John H., House (Additional Documentation), (Downtown Evansville MRA), 555 Sycamore St., Evansville, AD84001741
Kuebler-Artes Building (Additional Documentation), (Downtown Evansville MRA), 327 Main St., Evansville, AD84002895

NORTH CAROLINA

Surry County

Mount Airy Historic District (Additional Documentation), Main, Brown, Market, Franklin, W. Pine, Rockford, Worth, Cherry, and Gilmer Sts., Moore, and Hines Aves., Mount Airy, AD85002931

Wake County

St. Augustine's College Campus (Additional Documentation), Oakwood Ave., Raleigh, AD80002903

Authority: Section 60.13 of 36 CFR part 60.

Dated: August 11, 2021.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2021–17795 Filed 8–18–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–656 and 731–TA–1533 (Final)]

Metal Lockers From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of metal lockers from China, provided for in subheadings 9403.20.00 and 9403.90.80 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the government of China.[2]

Background

The Commission instituted these investigations effective July 9, 2020, following receipt of petitions filed with the Commission and Commerce by List Industries, Inc., Deerfield Beach, Florida; Lyon LLC, Montgomery, Illinois; Penco Products, Inc., Greenville, North Carolina; and Tennsco Corp., Dickson, Tennessee.[3] The final phase of the investigations was scheduled by the Commission following

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chair Jason E. Kearns and Commissioner David S. Johanson dissenting.

[3] Lyon LLC withdrew as a petitioner in these investigations on October 15, 2020.

notification of preliminary determinations by Commerce that imports of metal lockers from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 15, 2021 (86 FR 14338). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on June 24, 2021. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on August 13, 2021. The views of the Commission are contained in USITC Publication 5218 (August 2021), entitled *Metal Lockers from China: Investigation Nos. 701–TA–656 and 731–TA–1533 (Final).*

By order of the Commission.

Issued: August 16, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–17815 Filed 8–18–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1191]

Certain Audio Players and Controllers, Components Thereof, and Products Containing Same; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on August 13, 2021, the presiding chief administrative law judge (''CALJ'') issued an Initial Determination on Violation of Section 337. The CALJ also issued a Recommended Determination on Remedy and Bond should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: A limited exclusion order directed to certain audio players and controllers, components thereof, and products containing the same that are imported, sold for importation, and/or sold after importation by respondent Google LLC of Mountain View, California, that infringe one or more of claims 17, 21, 24, and 26 of U.S. Patent No. 9,195,258; claims 7, 14, and 22–24 of U.S. Patent No. 10,209,953; claim 10 of U.S. Patent No. 9,219,959; claims 1, 2, and 5 of U.S. Patent No. 8,588,949; and/or claims 1, 5, 6, and 12 of U.S. Patent No. 10,439,896; and a cease and desist order directed to the same. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the CALJ's Recommended Determination on Remedy and Bond issued in this investigation on August 13, 2021. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions from the public must be filed no later than by close of business on September 13, 2021.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1191'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the

Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 16, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–17816 Filed 8–18–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–887]

Importer of Controlled Substances Application: Galephar Pharmaceutical Research Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Galephar has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 20, 2021. Such persons may also file a written request for a hearing on the application on or before September 20, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 23, 2021, Galephar Pharmaceutical Research Inc., 100 Carr 198 Industrial Park, Juncos, Puerto Rico 00777–3873, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Hydromorphone	9150	II

The company plans to import the listed controlled substance in finished dosage form for analytical purpose only. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–17765 Filed 8–18–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–886]

Importer of Controlled Substances Application: Chattem Chemicals, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Chattem Chemicals, Inc., has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 20, 2021. Such persons may also file a written request for a hearing on the application on or before September 20, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 23, 2021, Chattem Chemicals, Inc., 3801 Saint Elmo Avenue, Chattanooga, Tennessee 37409–1237, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methamphetamine	1105	II
4-Anilino-N-Phenethyl-4-Piperidine (ANPP).	8333	II
Phenylacetone	8501	II
Coca Leaves	9040	II
Opium, Raw	9600	II
Poppy Straw Concentrate	9670	II
Tapentadol	9780	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers. The company plans to import an intermediate of Tapentadol (9780), to bulk manufacture Tapentadol for distribution to its customers. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-

approved finished dosage forms for commercial sale.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–17764 Filed 8–18–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Agency Information Collection Activities; Comment Request; Job Accommodation Network Customer Satisfaction Questionnaire

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the DOL is soliciting public comments regarding this ODEP-sponsored information collection to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments pertaining to this information collection are due on or before October 18, 2021.

ADDRESSES: Electronic submission: You may submit comments and attachments electronically at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail submission: 200 Constitution Ave. NW, Room S–5315, Washington, DC 20210. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the DOL, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the DOL's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Betsy Kravitz by telephone at 202–693–7860 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Job Accommodation Network (JAN) is a leading source of guidance on job accommodations and disability employment issues and has served customers for more than 35 years. JAN provides free one-on-one practical guidance and technical assistance on job accommodation solutions, Title I of the Americans with Disabilities Act (ADA) and related legislation, and self-employment and entrepreneurship options for people with disabilities. JAN provides individualized consultation to assist:

- Employers and their representatives seeking guidance on practical ways to engage in the interactive process, provide job accommodation solutions, and comply with Title I of the ADA;
- Individuals with medical conditions and disabilities seeking information about job accommodation solutions, employment rights under the ADA, and self-employment and entrepreneurship opportunities; and
- Family members and rehabilitation, medical, educational, and other professionals in their effort to support successful employment outcomes for individuals with medical conditions and disabilities.

JAN customers (employer representatives, service providers, and individuals with disabilities) who contact JAN via phone calls, email, and internet chats and who have inquiries related to workplace accommodation or self-employment issues will be asked to participate in the Customer Satisfaction Questionnaire, which is sent via email. The initial email requesting participation includes the Informed Consent script used by both JAN and the West Virginia University School of Social Work. Informed consent specifies that the purpose is to evaluate JAN's services and to identify ways in which services can be improved to assist clients. Potential participants also will be informed that their decision to either participate or refuse to participate will in no way impact their ability to use JAN's services in the future. Following the link to complete the questionnaire is considered consent. Customers can also opt out of further contacts or choose to contact the evaluator directly if there are questions or concerns. The statement has been approved by the West Virginia University Internal Review Board. The questionnaire requests demographic information, accommodation process details and costs, and general satisfaction items. Respondents can choose to answer or skip each item.

This information collection is subject to the Paperwork Reduction Act (PRA). A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

The DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an Information Collection Review cannot be for more than three (3) years without renewal. The DOL notes that currently approved information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Agency: DOL–ODEP.

Type of Review: New information collection.

Title of Collection: Job Accommodation Network (JAN) Customer Satisfaction Questionnaire.

OMB Control Number: 1230–0NEW.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 1,680.

Frequency: Once per customer every 6 months.

Total Estimated Number of Responses: 1,680.

Total Estimated Annual Time Burden: 420 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: August 12, 2021.

Jennifer Sheehy,

Deputy Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 2021–17787 Filed 8–18–21; 8:45 am]

BILLING CODE 4510–FK–P

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) issued during the period of *July 1 2021 through July 31 2021.*

This notice includes summaries of initial determinations such as Affirmative Determinations of Eligibility, Negative Determinations of Eligibility, and Determinations Terminating Investigations of Eligibility within the period. If issued in the

period, this notice also includes summaries of post-initial determinations that modify or amend initial determinations such as Affirmative Determinations Regarding Applications for Reconsideration, Negative Determinations Regarding Applications for Reconsideration, Revised Certifications of Eligibility, Revised Determinations on Reconsideration, Negative Determinations on Reconsideration, Revised Determinations on remand from the Court of International Trade, and Negative Determinations on remand from the Court of International Trade.

Affirmative Determinations for Trade Adjustment Assistance

The following certifications have been issued.

TA–W No.	Workers' firm	Location	Reason(s)
96609	Wabel Tool Company	Decatur, IL	Customer Imports of Articles.
96753	Baylor Scott & White Health	All Cities, TX	Shift in Services to a Foreign Country.
96763	Georgia-Pacific Consumer Operations LLC.	Easton, PA	Customer Imports of Articles.
96821	South Coast Lumber Company	Brookings, OR	ITC Determination.
96830	Eaton Corporation	Wilsonville, OR	Customer Imports of Articles.
96849	Kari-Out LLC dba Kari-Out Company	Brookneal, VA	Customer Imports of Articles.
96884	Vestas Blades America, Inc	Windsor, CO	Shift in Production to a Foreign Country.
96900	National Instruments	Austin, TX	Shift in Production to a Foreign Country.
96910	Globe Metallurgical Inc	Beverly, OH	ITC Determination.
96917	Hanesbrands, Inc	Stuart, VA	Shift in Production to a Foreign Country.
96922	CSG Systems, Inc	Elkhorn, NE	Shift in Services to a Foreign Country.
96925	Albea Cosmetics America, Inc	Morristown, TN	Shift in Production to a Foreign Country.
96928	Granges Americas, Inc	Newport, AR	ITC Determination.
96929	AVENTICS Corporation	Lexington, KY	Shift in Production to a Foreign Country.
96931	Worthington Industries	Worthington, OH	ITC Determination.
96933	Eaton Corporation	Hastings, NE	Shift in Production to a Foreign Country.
96941	Nichols Aluminum LLC	Lincolnshire, IL	ITC Determination.
96942	HERE North America, LLC	Chicago, IL	Acquisition of Services from a Foreign Country.
96943	Molded Fiber Glass	Aberdeen, SD	Company Imports of Articles.
96946	Clarios, LLC	Middletown, DE	Company Imports of Articles.
96949	Evergy LLC	Paris, TN	Shift in Production to a Foreign Country.
96952	Solstice Sleep Products Inc	Columbus, OH	ITC Determination.
96956	U.S. Bank, National Association	Oshkosh, WI	Acquisition of Services from a Foreign Country.
96961	Mississippi Silicon LLC	Burnsville, MS	ITC Determination.
96968	Jacobs Engineering Group Inc	Englewood, CO	Shift in Services to a Foreign Country.
96969	The Anthem Companies, Inc	Columbus, OH	Shift in Services to a Foreign Country.
96971	Vector USA, Inc	Kentland, IN	Shift in Production to a Foreign Country.
96972	Golden Aluminum	Fort Lupton, CO	ITC Determination.
96973	Ashley Furniture Industries, LLC	Saltillo, MS	ITC Determination.
96974	Ashley Furniture Industries, LLC	Verona, MS	ITC Determination.
96975	Capital Bedding, Inc	Verona, MS	ITC Determination.
96984	The Mosaic Company	Lithia, FL	ITC Determination.
96987	Champion Technologies Inc	Eugene, OR	Shift in Production to a Foreign Country.
96992	Elite Comfort Solutions, LLC	Verona, MS	ITC Determination.
96993	FXI, Inc	Baldwyn, MS	ITC Determination.
96994	AT&T Services, Inc	Oakton, VA	Acquisition of Services from a Foreign Country.
96999	Old West Mattress Company LLC	Aurora, CO	ITC Determination.
97001	Mylan Technologies, Inc	Swanton, VT	Secondary Component Supplier.
97008	Salt Lake Mattress and Manufacturing Company DBA Serta Restonic, Sunset Apparel, Sunset Manufacture.	Salt Lake City, UT	ITC Determination.
97009	Purple Innovation, Inc	Lehi, UT	ITC Determination.
97010	Comfort Revolution, LLC	Belmont, MS	ITC Determination.
97012	Symbol Mattress of Mississippi	Olive Branch, MS	ITC Determination.
97014	SSB Manufacturing Company, a wholly-owned subsidiary of Serta Simmons Bedding, LLC.	Aurora, CO	ITC Determination.
97024	Corsicana Bedding, LLC	Aurora, IL	ITC Determination.
97034	Serta Simmons Bedding Manufacturing Company, a wholly owned subsidiary of Serta Simmons Bedding LLC.	Riviera Beach, FL	ITC Determination.
97036	Anthem Companies, Inc	Richmond, VA	Shift in Services to a Foreign Country.

TA–W No.	Workers' firm	Location	Reason(s)
97037	Anthem Companies, Inc	Norfolk, VA	Shift in Services to a Foreign Country.
97041	Innocor, Inc	West Chicago, IL	ITC Determination.
97042	Anthem Companies, Inc	Denver, CO	Shift in Services to a Foreign Country.
97055	Collins Aerospace	Everett, WA	Secondary Component Supplier.
97057	WindKits LLC	Allentown, PA	Shift in Production to a Foreign Country.
97069	Serta Simmons Bedding, LLC	Windsor Locks, CT	ITC Determination.
97082	AT&T Services, Inc	Chicago, IL	Acquisition of Services from a Foreign Country.
97084	Globe Metallurgical Inc	Niagara Falls, NY	ITC Determination.
97087	Triumph Composites Systems, Inc	Spokane, WA	Shift in Production to a Foreign Country.
97089	Spartech, LLC	Greenville, OH	ITC Determination.
97090	Tekni-Plex Inc	Holland, OH	ITC Determination.
97097	Octal Extrusion Corp	Cincinnati, OH	ITC Determination.
97098	JPMorgan Chase & Co	Jersey City, NJ	Shift in Services to a Foreign Country.
97101	EasyPak	Vernon, CA	ITC Determination.
97102	General Mills, Inc	Golden Valley, MN	Shift in Services to a Foreign Country.
97110	Pactiv LLC	Santa Fe Springs, CA	ITC Determination.
97114	American Pacific Plastic Fabricators Inc.	Garden Grove, CA	ITC Determination.
97115	Carpenter Co	Riverside, CA	ITC Determination.
97117	Elite Comfort Solutions, LLC, a subsidiary of Leggett & Platt Incorporated.	Ontario, CA	ITC Determination.
97118	Royal Pedic Mattress Manufacturing, LLC.	Wilmington, CA	ITC Determination.
97119	Tempur Sealy International, Inc	Richmond, CA	ITC Determination.
97120	Future Foam, Inc	Newton, KS	ITC Determination.

Negative Determinations for Trade Adjustment Assistance

The following investigations revealed that the eligibility criteria for TAA have not been met for the reason(s) specified.

TA–W No.	Workers' firm	Location	Reason(s)
95617	Bluestone Coke, LLC	Birmingham, AL	No Shift in Production or Other Basis.
96810	Jeld-Wen, Inc	Chiloquin, OR	No Sales or Production Decline or Other Basis.
96822	XPO Logistics Supply Chain, Inc	Hazelwood, MO	No Shift in Services or Other Basis.
96833	ICC Northwest, Inc	Canby, OR	No Sales or Production Decline or Other Basis.
96840	Kobelco Construction Machinery USA, Inc.	Moore, SC	No Shift in Production or Other Basis.
96848	Clarios, LLC	Florence, SC	No Shift in Services or Other Basis.
96875	NewPark Drilling Fluids, LLC	Denver, CO	No Shift in Production or Other Basis.
96939	Ethan Allen Global, Inc	Danbury, CT	No Employment Decline or Threat of Separation or ITC.
96966	D6 Inc	Portland, OR	No Shift in Production or Other Basis.
97061	Katerra, Inc	Centennial, CO	No Shift in Services or Other Basis.

Determinations Terminating Investigations for Trade Adjustment Assistance

The following investigations were terminated for the reason(s) specified.

TA–W No.	Workers' firm	Location	Reason(s)
97039	Tempur Sealy International Inc. (Mattress Firm).	Plainfield, IL	Petitioner Requests Withdrawal.
97058	Henkel Corporation	Kansas City, MO	Existing Certification in Effect.
98003	Malteurop North America, Inc	Milwaukee, WI	Ongoing Investigation in Process.

Revised Certifications of Eligibility

The following revised certifications of eligibility to apply for TAA have been issued.

TA–W No.	Workers' firm	Location	Reason(s)
93882	Harley-Davidson Motor Company Operations, Inc.	Kansas City, MO	Worker Group Clarification.

Revised Determinations on Reconsideration

The following revised determinations on reconsideration, certifying eligibility to apply for TAA, have been issued.

TA–W No.	Workers' firm	Location	Reason(s)
95932	Triumph Aerospace Structures	Tulsa, OK	Imports of Finished Articles Containing Like or Directly Competitive Components.

Negative Determinations on Reconsideration

The following negative determinations on reconsideration have been issued because the eligibility criteria for TAA have not been met for the reason(s) specified.

TA–W No.	Workers' firm	Location	Reason(s)
95329	General Motors LLC	Detroit, MI	No Shift in Services or Other Basis.

Negative Determinations on Remand From the Court of International Trade

In the following cases, negative determinations on remand have been issued because the eligibility criteria for TAA have not been met for the reason(s) specified.

TA–W No.	Workers' firm	Location	Reason(s)
94578	Michigan Bell Telephone Company	Kalamazoo, MI	No Shift in Services or Other Basis.
94578A	Wisconsin Bell, Inc	Appleton, WI	No Shift in Services or Other Basis.
94578B	Indiana Bell Telephone Company Incorporated.	Indianapolis, IN	No Shift in Services or Other Basis.
94578C	AT&T Services, Inc	Syracuse, NY	No Shift in Services or Other Basis.
94578D	AT&T Services, Inc	Meridian, CT	No Shift in Services or Other Basis.

I hereby certify that the aforementioned determinations were issued during the period of *July 1 2021 through July 31 2021.* These determinations are available on the Department's website *https://www.dol.gov/agencies/eta/tradeact* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 10th day of August 2021.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2021–17766 Filed 8–18–21; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents notice of investigations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) started during the period of *July 1 2021 through July 31 2021.*

This notice includes instituted initial investigations following the receipt of validly filed petitions. Furthermore, if applicable, this notice includes investigations to reconsider negative initial determinations or terminated initial investigations following the receipt of a valid application for reconsideration.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. Any persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the

Administrator, Office of Trade Adjustment Assistance, at the address shown below, no later than ten days after publication in **Federal Register**.

Initial Investigations

The following are initial investigations commenced following the receipt of a properly filed petition.

TA–W No.	Workers' firm	Location	Investigation start date
97062	Energizer Manufacturing, Inc	Bennington, VT	7/1/2021
97063	Graham Packaging	Kansas City, MO	7/1/2021
97064	Never Again Industries LLC	Chesapeake, VA	7/1/2021
97065	GE Aviation	Batesville, MS	7/1/2021
97066	Allstate Insurance	Largo, FL	7/1/2021
97067	Tranter Inc	Wichita Falls, TX	7/1/2021
97068	GE Aviation	Arkansas City, KS	7/1/2021
97069	Serta Simmons Bedding, LLC	Windsor Locks, CT	7/1/2021
97070	Altor Safety	Valley Cottage, NY	7/1/2021
97071	Collins Aerospace	Vergennes, VT	7/1/2021
97072	Cerner, Innovations Campus	Kansas City, MO	7/1/2021
97073	Stanadyne Automotive	Windsor, CT	7/1/2021
97074	Lee Aerospace, Inc	Wichita, KS	7/1/2021
97075	Swiss Re America Holding Corp	Kansas City, MO	7/1/2021
97076	NTT DATA Services, LLC	Plano, TX	7/1/2021
97077	Medical Faculty Associates, Inc	Washington, DC	7/1/2021
97078	Kimberly-Clark Corporation	Conway, AR	7/1/2021
97079	AW Industries	Hyattsville, MD	7/1/2021
97080	BCS Automotive Interface Solutions U.S., LLC	Auburn, NY	7/1/2021
97081	Hospitality Mints	Boone, NC	7/1/2021
97082	AT&T Services, Inc	Chicago, IL	7/1/2021
97083	Sunset Moulding Company	Chico, CA	7/1/2021
97084	Globe Metallurgical Inc	Niagara Falls, NY	7/1/2021
97085	Novelis Corporation	Oswego, NY	7/1/2021
97086	Serta Simmons Bedding LLC	Jamestown, NY	7/1/2021
97087	Triumph Composites Systems, Inc	Spokane, WA	7/1/2021
97088	Kyocera Senco Industrial Tools, Inc	Cincinnati, OH	7/2/2021
97089	Spartech, LLC	Greenville, OH	7/2/2021
97090	Tekni-Plex Inc	Holland, OH	7/2/2021
97091	TimkenSteel Corporation	Canton, OH	7/2/2021
97092	Marmon Foodservice Technologies Inc, d.b.a. Silver King.	Minneapolis, MN	7/2/2021
97093	Medtronic Inc	Columbia Heights, MN	7/2/2021
97094	Exostar LLC	Herndon, VA	7/2/2021
97095	AMITA Health (Ascension Technologies)	Lisle, IL	7/2/2021
97096	Frontier Communications	Deland, FL	7/2/2021
97097	Octal Extrusion Corp	Cincinnati, OH	7/2/2021
97098	JPMorgan Chase & Co	Jersey City, NJ	7/2/2021
97099	Amita Health (Ascension Technologies)	Chicago, IL	7/2/2021
97100	Acme Staple Company, Inc	Franklin, NH	7/2/2021
97101	EasyPak	Vernon, CA	7/2/2021
97102	General Mills, Inc	Golden Valley, MN	7/2/2021
97103	Serta Simmons Bedding, LLC	Lenexa, KS	7/2/2021
97104	Wyoming Machinery Company	Casper, WY	7/2/2021
97105	Aleris Rolled Products, Inc	North Chesterfield, VA	7/2/2021
97106	The News Journal	New Castle, DE	7/2/2021
97107	Foot Locker Corporate Services Inc	Milwaukee, WI	7/2/2021
97108	Gannett Company Inc	Mc Lean, VA	7/2/2021
97109	Global Plastics, Inc	Perris, CA	7/2/2021
97110	Pactiv LLC	Santa Fe Springs, CA	7/2/2021
97111	rePlanet Packaging LLC	Visalia, CA	7/2/2021
97112	rPlanet Earth Los Angeles LLC	Vernon, CA	7/2/2021
97113	Netzsch Premier Technologies Inc	Exton, PA	7/2/2021
97114	American Pacific Plastic Fabricators Inc	Garden Grove, CA	7/2/2021
97115	Carpenter Co	Riverside, CA	7/2/2021
97116	Peak Oilfield Service Company	Prudhoe Bay, AK	7/2/2021
97117	Elite Comfort Solutions, LLC, a subsidiary of Leggett & Platt Incorporated.	Ontario, CA	7/2/2021
97118	Royal Pedic Mattress Manufacturing, LLC	Wilmington, CA	7/2/2021
97119	Tempur Sealy International, Inc	Richmond, CA	7/2/2021
97120	Future Foam, Inc	Newton, KS	7/2/2021
97121	SSB Manufacturing Company	West Coxsackie, NY	7/2/2021
97122	Sierra Pacific Industries	Red Bluff, CA	7/2/2021
97123	Yuba River Moulding and Millwork, Inc	Olivehurst, CA	7/2/2021
98000	Malteurop North America Inc	Milwaukee, WI	7/9/2021
98001	Employees of Olin Corp, Blue Cube Operations	Freeport, TX	7/12/2021
98002	Emerson Automation Solutions Final Control US LP.	Black Mountain, NC	7/14/2021

TA–W No.	Workers' firm	Location	Investigation start date
98003	Malteurop North America, Inc	Milwaukee, WI	7/15/2021
98004	The Miller Company	Meriden, CT	7/15/2021
98005	Stant USA Corporation	Pine Bluff, AR	7/15/2021
98006	American International Group—AIG Technologies.	Fort Worth, TX	7/19/2021
98007	Cubic Trafficware	Sugar Land, TX	7/19/2021
98008	Fieldwood Energy LLC	Houston, TX	7/19/2021
98009	Core Composites Cincinnati, LLC	Batavia, OH	7/20/2021
98010	Miken Sports	Caledonia, MN	7/20/2021
98011	Terumo BCT, Inc	Lakewood, CO	7/21/2021
98012	Western Union	Denver, CO	7/22/2021
98013	Customer Engagement Services, LLC (CES)	Phoenix, AZ	7/23/2021
98014	The Mosaic Company (Uncle Sam Plant)	Uncle Sam, LA	7/23/2021
98015	Ensono	Conway, AR	7/26/2021
98016	Web Industries, Inc	Middlesex, VT	7/26/2021
98017	FujiFilm Manufacturing USA, Inc	Greenwood, SC	7/27/2021
98018	Prismview, LLC—A Samsung Electronics Company.	Logan, UT	7/28/2021
98019	Betsy & Adam/Xscape Evenings	New York, NY	7/28/2021
98020	GSI	Omaha, NE	7/29/2021

A record of these investigations and petitions filed are available, subject to redaction, on the Department's website *https://www.dol.gov/agencies/eta/tradeact* under the searchable listing or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 10th day of August 2021.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2021–17767 Filed 8–18–21; 8:45 am]

BILLING CODE 4510–FN–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92666; File No. SR–NASDAQ–2021–062]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Expiration Timeframe of Long-Term Index Options Series

August 13, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 9, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC (''NOM'') Rules at Options 2, Section 5, Market Maker Quotations and Options 4A, Section 12, Terms of Index Option Contracts.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NOM Rules at Options 2, Section 5, Market Maker Quotations and Options 4A, Section 12, Terms of Index Option Contracts. Specifically, the Exchange proposes to amend the expiration timeframe of Long-Term Options Series or ''LEAPs.''

Options 2, Section 5(d)(2)(A) currently provides, ''Bid/ask differentials shall not apply to any options series until the time to expiration is less than nine (9) months for index options.'' Similarly, Options 4A, Section 12(b) currently states,

> (1) Notwithstanding the provisions of paragraph (a)(3), above, NOM may list long-term index options series that expire from nine (9) to sixty (60) months from the date of issuance.
>
> (A) Index long term options series may be based on either the full or reduced value of the underlying index. There may be up to ten (10) expiration months, none further out than sixty (60) months. Strike price interval and continuity Rules shall not apply to such options series until the time to expiration is less than nine (9) months. Bid/ask differentials for long-term options contracts are specified within Options 2, Section 5(d)(2)(A).

The Exchange proposes to amend the current text of Options 2, Section 5(d)(2)(A) and Options 4A, Section 12(b) to amend the time to expiration term of LEAPs on index options from nine to sixty months to twelve to sixty months. Likewise, the Exchange proposes to amend the time to expiration for strike price interval, continuity rules and bid/ask differentials for LEAPS on index options from less than nine to less than twelve months.

Today, other options markets have terms similar to those proposed herein.[3] The proposal would align NOM's rules with other options markets with respect

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Options Exchange, Inc. Rule 4.13(b). *See also* Nasdaq Phlx LLC and Nasdaq ISE, LLC Options 4A, Section 12(b).

to the opening month for LEAPs on index options and the time to expiration for strike price interval, continuity rules and bid/ask differentials for LEAPS on index options by changing nine to twelve months.

The Exchange also proposes to amend Options 2, Section 5 concerning a Market Maker's obligation to make two-sided markets in any option series with an expiration of nine months or greater. Today, Market Makers are not required to make two-sided markets in Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater in equities, ETFs or indexes. With this proposal, Market Makers are not required to make two-sided markets in Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater in equities, and ETFs. With respect to indexes, Market Makers would not be required to make two-sided markets in Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of twelve months or greater. The Exchange proposes to add rule text within Options 2, Section 5 to make clear a Market Maker's obligation, respectively, to make two-sided markets with respect to LEAPs. Today, Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'') have similar rules which describe the way LEAPs on index options should be quoted.[4]

Implementation

The Exchange proposes to implement this amendment on or before September 30, 2021. The Exchange will issue an Options Trader Alert announcing the date the amendment will be operative.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by amending its rules, in part, to align NOM's rules with other options markets with respect to the opening month of acceptable months for LEAPs on index options and the time to expiration for strike price interval, continuity rules and bid/ask differentials for LEAPS on index options. Today, other options markets have terms similar to those proposed herein.[7]

Amending Options 2, Section 5(d)(2)(A) and Options 4A, Section 12(b) would harmonize NOM's rules with respect to LEAPs on index options to permit NOM to list these options in the same manner as other options markets that have similar rules.[8] The Exchange notes that this rule change will allow NOM to list more non-LEAP expirations as the front-months for LEAP expirations would begin with month twelve instead of month nine. The Exchange believes that this proposal would allow it to list more months where there is greater customer demand as this proposal would amend the opening month for LEAPs on index options from nine to twelve months. Harmonizing NOM's rules with respect to LEAPs on index options will allow NOM to list these options in the same manner as other options markets that have similar rules.[9]

Amending Options 2, Section 5 to specifically note that the opening month for LEAPs on index options would be twelve months by adding a separate sentence to address LEAPs for index options is consistent with the Act. The proposal would align the Exchange with the way other options markets require market makers to quote LEAPs on index options.[10] NOM Market Makers would be required to provide two-sided quotations in additional months with this proposal as the opening month for LEAPs on index options is changing from nine to twelve months.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe the proposal to amend Options 2, Section 5(d)(2)(A) and Options 4A, Section 12(b) will impose any burden on intra-market competition as all Participants will be treated in the same manner with respect to time to expiration for strike price interval, continuity rules and bid/ask differentials for LEAPs on index options. Additionally, the Exchange does not believe the proposal will impose any burden on inter-market competition as market participants are welcome to become NOM Participants if they determine that this proposed rule change has made NOM more attractive or favorable. Finally, all options exchanges are free to compete by listing and trading index options with similar expirations.

Amending Options 2, Section 5 to specifically note that the opening month for LEAPs on index options would be twelve months by adding a separate sentence to address LEAPs on index options does not impose an undue burden on competition, rather the proposal aligns the Exchange's rule with rules of other options markets with respect to quoting LEAPs.[11]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. Waiver of the operative delay would allow the Exchange to align its rules with other options exchanges with respect to the opening month for LEAPs on index options and implement its proposed rule change on or before September 30, 2021. The Commission believes that the proposed rule change presents no novel issues and that waiver

[4] See ISE, GEMX and MRX Options 2, Section 5(e)(1).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See supra* note 3.

[8] *See supra* note 3.

[9] *See supra* note 3.

[10] See ISE, GEMX and MRX Options 2, Section 5(e)(1).

[11] *See* ISE, GEMX and MRX Options 2, Section 5(e)(1).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–062, and should be submitted on or before September 9, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17758 Filed 8–18–21; 8:45 am]

BILLING CODE 8011–01–P

[16] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92664; File No. SR–BX–2021–034]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Expiration Timeframe of Long-Term Index Options Series

August 13, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Rules at Options 2, Section 4, Obligations of Market Makers and Lead Market Makers; Options 2, Section 5, Market Maker Quotations; and Options 4A, Section 12, Terms of Index Option Contracts.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BX Options 2, Section 4, Obligations of Market Makers and Lead Market Makers; Options 2, Section 5, Market Maker Quotations; and Options 4A, Section 12, Terms of Index Option Contracts. Specifically, the Exchange proposes to amend the expiration timeframe of Long-Term Options Series or ''LEAPs.''

Options 2, Section 5(d)(2)(A) currently provides, ''Bid/ask differentials shall not apply to any options series until the time to expiration is less than nine (9) months for index options.'' Similarly, Options 4A, Section 12(b) currently states,

> (1) Notwithstanding the provisions of paragraph (a)(3), above, BX Options may list long-term index options series that expire from nine (9) to sixty (60) months from the date of issuance.
>
> (i) Index long term options series may be based on either the full or reduced value of the underlying index. There may be up to ten (10) expiration months, none further out than sixty (60) months. Strike price interval and continuity Rules shall not apply to such options series until the time to expiration is less than nine (9) months. Bid/ask differentials for long-term options contracts are specified within Options 2, Section 5(d)(2)(A).

The Exchange proposes to amend the current text of Options 2, Section 5(d)(2)(A) and Options 4A, Section 12(b) to amend the time to expiration term of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

LEAPs on index options from nine to sixty months to twelve to sixty months. Likewise, the Exchange proposes to amend the time to expiration for strike price interval, continuity rules and bid/ask differentials for LEAPS on index options from less than nine to less than twelve months.

Today, other options markets have terms similar to those proposed herein.[3] The proposal would align BX's rules with other options markets with respect to the opening month for LEAPs on index options and the time to expiration for strike price interval, continuity rules and bid/ask differentials for LEAPS on index options by changing nine to twelve months.

The Exchange also proposes to amend Options 2, Sections 4 and 5 concerning a Market Maker's or Lead Market Maker's obligation to make two-sided markets in any option series with an expiration of nine months or greater. Today, Market Makers and Lead Market Makers are not required to make two-sided markets in Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater in equities, ETFs or indexes. With this proposal, Market Makers and Lead Market Makers are not required to make two-sided markets in Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater in equities, and ETFs. With respect to indexes, Market Makers and Lead Market Makers would not be required to make two-sided markets in Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of twelve months or greater. The Exchange proposes to add rule text within Options 2, Sections 4 and 5 to make clear a Lead Market Maker's and Market Maker's obligation, respectively, to make two-sided markets with respect to LEAPs. Today, Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'') have similar rules which describe the way LEAPs on index options should be quoted.[4]

Implementation

The Exchange proposes to implement this amendment on or before September 30, 2021. The Exchange will issue an Options Trader Alert announcing the date the amendment will be operative.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by amending its rules, in part, to align BX's rules with other options markets with respect to the opening month of acceptable months for LEAPs on index options and the time to expiration for strike price interval, continuity rules and bid/ask differentials for LEAPS on index options. Today, other options markets have terms similar to those proposed herein.[7]

Amending Options 2, Section 5(d)(2)(A) and Options 4A, Section 12(b) would harmonize BX's rules with respect to LEAPs on index options to permit BX to list these options in the same manner as other options markets that have similar rules.[8] The Exchange notes that this rule change will allow BX to list more non-LEAP expirations as the front-months for LEAP expirations would begin with month twelve instead of month nine. The Exchange believes that this proposal would allow it to list more months where there is greater customer demand as this proposal would amend the opening month for LEAPs on index options from nine to twelve months. Harmonizing BX's rules with respect to LEAPs on index options will allow BX to list these options in the same manner as other options markets that have similar rules.[9]

Amending Options 2, Sections 4 and 5 to specifically note that the opening month for LEAPs on index options would be twelve months by adding a separate sentence to address LEAPs for index options is consistent with the Act. The proposal would align the Exchange with the way other options markets require market makers to quote LEAPs on index options.[10] BX Lead Market Makers and Market Makers would be required to provide two-sided quotations in additional months with this proposal as the opening month for LEAPs on index options is changing from nine to twelve months.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe the proposal to amend Options 2, Section 5(d)(2)(A) and Options 4A, Section 12(b) will impose any burden on intra-market competition as all Participants will be treated in the same manner with respect to time to expiration for strike price interval, continuity rules and bid/ask differentials for LEAPs on index options. Additionally, the Exchange does not believe the proposal will impose any burden on inter-market competition as market participants are welcome to become BX Participants if they determine that this proposed rule change has made BX more attractive or favorable. Finally, all options exchanges are free to compete by listing and trading index options with similar expirations.

Amending Options 2, Sections 4 and 5 to specifically note that the opening month for LEAPs on index options would be twelve months by adding a separate sentence to address LEAPs on index options does not impose an undue burden on competition, rather the proposal aligns the Exchange's rule with rules of other options markets with respect to quoting LEAPs.[11]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

[3] *See* Cboe Options Exchange, Inc. Rule 4.13(b). *See also* Nasdaq Phlx LLC and Nasdaq ISE, LLC Options 4A, Section 12(b).

[4] See ISE, GEMX and MRX Options 2, Section 5(e)(1).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See supra* note 3.

[8] *See supra* note 3.

[9] *See supra* note 3.

[10] See ISE, GEMX and MRX Options 2, Section 5(e)(1).

[11] *See* ISE, GEMX and MRX Options 2, Section 5(e)(1).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing

Continued

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. Waiver of the operative delay would allow the Exchange to align its rules with other options exchanges with respect to the opening month for LEAPs on index options and implement its proposed rule change on or before September 30, 2021. The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2021–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2021–034. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2021–034, and should be submitted on or before September 9, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92662; File No. SR–EMERALD–2021–25]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Emerald Express Interface Ports

August 13, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 2021, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the Exchange's Fee Schedule (the ''Fee Schedule'') to amend certain port fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt a tiered-pricing structure for additional Limited Service MIAX Emerald Express Interface (''MEI'') Ports [3] available to Market Makers.[4] The Exchange believes a tiered-pricing structure will encourage Market Makers to be more efficient and economical when determining how to connect to the Exchange. This should also enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System.[5]

Additional Limited Service MEI Port Tiered-Pricing Structure

The Exchange proposes to amend the fees for additional Limited Service MEI Ports. Currently, the Exchange allocates two (2) Full Service MEI Ports [6] and two (2) Limited Service MEI Ports [7] per matching engine [8] to which each Market Maker connects. Market Makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. The Full Service MEI Ports, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports for which they are assessed a $100 monthly fee for each additional Limited Service MEI Port for each matching engine.

The Exchange now proposes to move from a flat monthly fee per additional Limited Service MEI Port for each matching engine to a tiered-pricing structure per additional Limited Service MEI Ports for each matching engine under which the monthly fee would vary depending on the number of additional Limited Service MEI Ports the Market Maker elects to purchase. Specifically, the Exchange will continue to provide the first and second additional Limited Service MEI Ports for each matching engine free of charge, as described above, per the initial allocation of Limited Service MEI Ports that Market Makers receive. Specifically, (i) the third and fourth additional Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of $100 to $200 per port; (ii) the fifth and sixth additional Limited Service MEI Ports for engine matching engine will increase from the current flat monthly fee of $100 to $300 per port; and (iii) the seventh to the twelfth additional Limited Service MEI Ports will increase from the current monthly flat fee of $100 to $400 per port (collectively, the ''Proposed Access Fees'').

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [11] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Exchange believes the proposal to move from a flat fee per month to a tiered-pricing structure is reasonable, equitably allocated and not unfairly discriminatory because the Exchange believes the proposed structure would encourage firms to be more economical and efficient in the number of additional Limited Service MEI Ports they purchase. The Exchange believes this will enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System.

The Exchange notes that the firms that are primarily order routers seeking best-execution do not utilize Limited Service MEI Ports on MIAX Emerald. Therefore, the fees described in the proposed tiered-pricing structure will only be allocated to market making firms that engage in advanced trading strategies and typically request multiple Limited Service MEI Ports. Accordingly, the firms engaged in market making business generate higher costs by utilizing more of the Exchange's resources. The market making firms that purchase higher amounts of Limited Service MEI Ports tend to have specific business oriented market making and taking strategies, as opposed to firms simply engaging in best-execution order routing business. The use of such additional Limited Service MEI Ports is entirely voluntary.

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange deems port fees to be access fees. It records these fees as part of its ''Access Fees'' revenue

[3] The MIAX Emerald Express Interface (''MEI'') is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] ''Full Service MEI Ports'' means a port which provides Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[7] ''Limited Service MEI Ports'' means a port which provides Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[8] ''Matching Engine'' means a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. *See* the Definitions Section of the Fee Schedule.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

in its financial statements. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. The Exchange believes the Proposed Access Fees will allow the Exchange to offset expense the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees.

In order to determine the Exchange's costs to provide the access services associated with the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the access services associated with the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice. The Exchange is also providing detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the cost to the Exchange to provide the access services associated with the Proposed Access Fees.

In order to determine the Exchange's projected revenues associated with the Proposed Access Fees, the Exchange analyzed the number of Market Makers currently utilizing Limited Service MEI Ports, and, utilizing a recent monthly billing cycle representative of 2021 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants, discounts that can be achieved due to lower trading volume and vice versa, market participant consolidation, etc. Additionally, the Exchange similarly does not factor into its analysis future cost growth or decline. The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2020. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2020 or for the first seven months of 2021, the Exchange believes its 2020 Audited Unconsolidated Financial Statement is not useful for analyzing the reasonableness of the total annual revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services.

* * * * *

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[12] On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[13] Accordingly, the Exchange believes that the Proposed Access Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they will not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange, and its affiliates MIAX PEARL, LLC (''MIAX Pearl'') and Miami International Securities Exchange, LLC (''MIAX''), to establish or increase other non-transaction fees.[14] Accordingly, the Exchange believes that the Commission should find that the Proposed Access Fees are consistent with the Act.

* * * * *

As of July 31, 2021, the Exchange had a market share of only 4.15% of the U.S. equity options industry for the month of July 2021.[15] The Exchange is not aware of any evidence that a market share of approximately 4–5% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would join or access the Exchange, and existing market participants would discontinue all or some of their access services.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their access (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such market participant, did not make business or economic sense for such market participant to access such exchange. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do drop their access to exchanges based on non-transaction fee pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04). The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Similarly, the Exchange noted in a recent filing that once MIAX Emerald issued a notice that it was instituting MEI Port fees, among other

[12] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[13] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[14] *See* Securities Exchange Act Release Nos. 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR–PEARL–2021–01) (proposal to increase connectivity fees); 90980 (January 25, 2021), 86 FR 7602 (January 29, 2021) (SR–MIAX–2021–02) (proposal to increase connectivity fees).

[15] *See* ''The market at a glance,'' available at *https://www.miaxoptions.com/* (last visited July 31, 2021).

non-transaction fees, one MIAX Emerald Member dropped its access to MIAX Emerald as a result of those fees.[16] Accordingly, these examples show that if an exchange sets too high of a fee for ports and/or other non-transaction fees, including other access fees, for its relevant marketplace, market participants can choose to drop their access to such exchange.

In order to provide more detail and to quantify the Exchange's costs associated with providing access to the Exchange in general, the Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its System for market participants is not fixed. The Exchange believes the Proposed Access Fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Exchange only has four primary sources of revenue: Transaction fees, access fees (which includes the Proposed Access Fees), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these access services versus the total annual revenue that the Exchange projects to collect in connection with services associated with the Proposed Access Fees. For 2021,[17] the total annual expense for providing the access services associated with the Proposed Access Fees is projected to be approximately $0.88 million. The approximately $0.88 million in projected total annual expense is comprised of the following, all of which are directly related to the access services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the Proposed Access Fees.[18] As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[19] The $0.88 million in projected total annual expense is directly related to the access services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed expense items in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the access services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide access services associated with the Proposed Access Fees.

For 2021, total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the access services associated with the Proposed Access Fees, is projected to be $0.05 million. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking the Exchange's office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[20] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.). For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the access services associated with the Proposed Access Fees.

[16] *See* Securities Exchange Act Release No. 91460 (April 2, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees, Increase Certain Network Connectivity Fees, and Increase the Number of Additional Limited Service MIAX Emerald Express Interface Ports Available to Market Makers) (adopting tiered MEI Port fee structure ranging from $5,000 to $20,500 per month).

[17] The Exchange has not yet finalized its 2021 year end results.

[18] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[19] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2021 Form 1 Amendment, which will be filed in 2022.

[20] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the access services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 2.05% of the total applicable Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX Pearl and MIAX, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees, approximately 1.64% of the total applicable Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 2.05% of the total applicable SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 1.23% of the total applicable hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.

For 2021, total projected internal expense, relating to the internal costs of the Exchange to provide the access services associated with the Proposed Access Fees, is projected to be $0.83 million. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the access services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, and business that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the access services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the access services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange's employee compensation and benefits expense relating to providing the access services associated with the Proposed Access Fees is projected to be approximately $0.76 million, which is only a portion of the $9.74 million total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), and Trade Operations. As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of access services associated with the Proposed Access Fees. Without these employees,

the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 7.81% of the total applicable employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange's depreciation and amortization expense relating to providing the services associated with the Proposed Access Fees is projected to be $0.06 million, which is only a portion of the $3.13 million total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the access services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 1.92% of the total applicable depreciation and amortization expense, as these access services would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange's occupancy expense relating to providing the services associated with the Proposed Access Fees is projected to be $0.01 million, which is only a portion of the $0.52 million total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the access services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 150 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the access services associated with the Proposed Access Fees. Without this office space, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 1.93% of the total applicable occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange notes that a material portion of its total overall expense is allocated to the provision of access services (including connectivity, ports, and trading permits). The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources of fees to recover their costs; thus, the Exchange believes it is reasonable to allocate a material portion of their total overall expense towards access fees.

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. To illustrate, on a going-forward, fully-annualized basis, the Exchange projects that annualized revenue for providing the access services associated with the Proposed Access Fees would be approximately $2.07 million per annum, based on a recent billing cycle. The Exchange projects that its annualized expense for providing the services associated with the Proposed Access Fees will be approximately $0.88 million per annum. Accordingly, on a fully-annualized basis, the Exchange believes its total projected revenue for providing the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit, as the Exchange will make a profit margin of approximately 58% ($2.07 million in total revenue minus $.088 [sic] million in expense = $1.19 million in profit per annum). Additionally, this profit margin does not take into account the cost of capital expenditures (''CapEx'') the Exchange projects to spend each year on CapEx going forward.

For the avoidance of doubt, none of the expenses included herein relating to the access services associated with the Proposed Access Fees relate to the provision of any other services offered by the Exchange or its affiliates. Stated differently, no expense amount of the Exchange is allocated twice. The Exchange notes that, with respect to expenses associated with the Exchange's affiliates, MIAX Pearl and MIAX, those expenses are accounted for separately and are not included within the scope of this filing. Stated differently, no expense amount of the Exchange is also allocated to MIAX Pearl or MIAX.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective

percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the access services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to providing access to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing access services. The Proposed Access Fees are intended to recover the Exchange's costs of providing access to its System. Accordingly, the Exchange believes that the Proposed Access Fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to the Exchange versus the projected annual revenue from the Proposed Access Fees.

The Exchange believes the proposed changes are reasonable, equitably allocated and not unfairly discriminatory, and do not result in a ''supra-competitive'' [21] profit. Of note, the Guidance defines ''supra-competitive profit'' as profits that exceed the profits that can be obtained in a competitive market.[22] With the proposed changes, the Exchange anticipates it will have a profit margin of approximately 58% based on the Proposed Access Fees. Based on the 2020 Audited Financial Statements of competing options exchanges (since the 2021 Audited Financial Statements will likely not become publicly available until early July 2022, after the Exchange has submitted this filing), the Exchange's profit margin is similar to or below the operating profit margins of other competing exchanges. For example, Nasdaq ISE, LLC's (''ISE'') operating profit margin for all of 2020 was approximately 85%; Nasdaq PHLX LLC's (''PHLX'') operating profit margin for all of 2020 was approximately 49%; Nasdaq's operating profit margin for all of 2020 was approximately 62%; NYSE Arca, Inc.'s (''Arca'') operating profit margin for all of 2020 was approximately 55%; NYSE American LLC's (''Amex'') operating profit margin for all of 2020 was approximately 59%; Cboe's operating profit margin for all of 2020 was approximately 74%; and BZX's operating profit margin for all of 2020 was approximately 52%.

The Exchange further believes its proposed fees are reasonable, equitably allocated and not unfairly discriminatory because the Exchange believes that it benefits overall competition in the marketplace to allow relatively new entrants like the Exchange and its affiliates, MIAX Pearl and MIAX, to propose fees that may help these new entrants recoup their substantial investment in building out costly infrastructure. The Exchange and its affiliates have historically set their fees purposefully low in order to attract business and market share. The Exchange notes that the concept of a tiered-pricing structure for ports is not new or novel.[23]

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Exchange believes the proposal to move from a flat fee per month to a tiered-pricing structure is reasonable, equitably allocated and not unfairly discriminatory because the Exchange believes the proposed structure would encourage firms to be more economical and efficient in the number of Limited Service MEI Ports they purchase. The Exchange believes this will enable the Exchange to better monitor and provide access to the Exchange's network in order to ensure that the Exchange meets its obligations under the Act such that access to the Exchange is offered on terms that are not unfairly discriminatory, as well as to ensure sufficient capacity and headroom in the System.

There is also no regulatory requirement that any market participant access any one options exchange, that each Market Maker access the Exchange utilizing more than the two free Limited Service MEI Ports that the Exchange provides, access the Exchange in a particular capacity, or trade any particular product offered on the Exchange. Moreover, membership is not a requirement to participate on the Exchange. A market participant may submit orders to the Exchange via a Sponsored User.[24] Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer. Based on a recent analysis conducted by Cboe, as of October 21, 2020, only three (3) of the broker-dealers, out of approximately 250 broker-dealers, were members of at least one exchange that lists options for trading and were members of all 16 options exchanges.[25] Additionally, the Cboe Fee Filing found that several broker-dealers were members of only a single exchange that lists options for trading and that the number of members at each exchange that trades options varies greatly.[26]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

With respect to intra-market competition, the Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As stated above, the Exchange does not believe its proposed pricing will impose

[21] *See supra* note 13.

[22] *See id.*

[23] *See* Cboe BZX Exchange, Inc. (''BZX'') Options Fee Schedule, Options Logical Port Fees, Ports with Bulk Quoting Capabilities (charging $1,500/month for the 1st and 2nd port, $2,500/month for the 3rd port or more); Cboe Exchange, Inc. (''Cboe'') Fee Schedule, Logical Connectivity Fees (charging $750/month per port for BOE/FIX Logical Ports 1 to 5 and $800/month per port for BOE/FIX Logical Ports greater than 5; charging $1,500/month per port for BOE Bulk Logical Ports 1 to 5, $2,500/month per port for BOE Bulk Logical Ports 6 to 30, and $3,000/month per port for BOE Bulk Logical Ports greater than 30); The Nasdaq Stock Market LLC (''Nasdaq''), Options 7, Pricing Schedule, Section 3 Nasdaq Options Market—Ports and Other Services (charging $1,500/month per port for first 5 ports, $1,000/month per port for the next 15 ports, and $500/month per port for all ports over 20).

[24] *See* Exchange Rule 210. The Sponsored User is subject to the fees, if any, of the Sponsoring Member. The Exchange notes that the Sponsoring Member is not required to publicize, let alone justify or file with the Commission its fees, and as such could charge the Sponsored User any fees it deems appropriate, even if such fees would otherwise be considered supra-competitive, or otherwise potentially unreasonable or uncompetitive.

[25] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105) (the ''Cboe Fee Filing''). The Cboe Fee Filing cited to the October 2020 Active Broker Dealer Report, provided by the Commission's Office of Managing Executive, on October 8, 2020.

[26] *Id.*

a barrier to entry to smaller participants and notes that the proposed pricing structure for is associated with relative usage of the various market participants. Firms that are primarily order routers seeking best-execution do not utilize Limited Service MEI Ports on MIAX Emerald and therefore will not pay the fees associated with the tiered-pricing structure. Rather, the fees described in the proposed tiered-pricing structure will only be allocated to market making firms that engage in advanced trading strategies and typically request multiple Limited Service MEI Ports. Accordingly, the firms engaged in market making business generate higher costs by utilizing more of the Exchange's resources. The market making firms that purchase higher amounts of Limited Service MEI Ports tend to have specific business oriented market making and taking strategies, as opposed to firms simply engaging in best-execution order routing business. Additionally, the use of such additional Limited Service MEI Ports is entirely voluntary.

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to access all options exchanges. The Exchange operates in a highly competitive environment, and as discussed above, its ability to price access and ports is constrained by competition among exchanges and third parties. There are other options markets of which market participants may access in order to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. For example, there are 15 other U.S. options exchanges, which the Exchange must consider in its pricing discipline in order to compete for market participants. In this competitive environment, market participants are free to choose which competing exchange to use to satisfy their business needs. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[27] and Rule 19b–4(f)(2) [28] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2021–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2021–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2021–25 and should be submitted on or before September 9, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

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[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 240.19b–4(f)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92667; File No. SR–NYSE–2020–98]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, To Amend Its Rules To Prohibit Member Organizations From Seeking Reimbursement, in Certain Circumstances, From Issuers for Forwarding Proxy and Other Materials to Beneficial Owners

August 13, 2021.

I. Introduction

On November 30, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to prohibit member organizations from seeking reimbursement, in certain circumstances, from issuers for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forwarding proxy and other materials to beneficial owners. The proposed rule change was published for comment in the **Federal Register** on December 18, 2020.[3] On January 29, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 17, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On April 6, 2021, the Exchange filed Amendment No. 1 to the proposed rule change; the Exchange withdrew that amendment on April 16, 2021. On April 16, 2021, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on April 29, 2021.[8] On June 11, 2021, the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.[9] On June 22, 2021, the Exchange filed partial Amendment No. 3 to the proposed rule change.[10] This order approves the proposed rule change, as modified by Amendment Nos. 2 and 3.

II. Description of the Proposal, as Modified by Amendment Nos. 2 and 3

NYSE Rules (''Rule'') 451 and 465 require NYSE member organizations that hold securities for beneficial owners in street name to solicit proxies from, and deliver proxy and other materials to, beneficial owners on behalf of issuers.[11] For this service, issuers reimburse NYSE member organizations for out-of-pocket, reasonable clerical, postage, and other expenses incurred for a particular distribution.[12] This reimbursement structure stems from Rules 14b–1 and 14b–2 under the Act,[13] which impose obligations on issuers and nominees to ensure that beneficial owners receive proxy materials. These rules require issuers to send their proxy materials to broker-dealers or banks that hold securities in street name, for forwarding to beneficial owners, and to pay nominees for reasonable expenses, both direct and indirect, incurred in providing proxy information to beneficial owners.[14] The Commission's rules do not specify the fees that nominees can charge issuers for proxy distribution; rather, they state that issuers must reimburse the nominees for ''reasonable expenses'' incurred.[15]

The Exchange has proposed to adopt Rule 451A, pursuant to which, notwithstanding the applicable provisions of Rules 451 or 465 or what may be permitted by the rules of any other national securities exchange or national securities association of which a member organization is also a member, no fee shall be imposed for a nominee account that contains only shares or units of the securities involved that were transferred to the account holder by the member organization at no cost.[16]

According to the Exchange, the proposed rule is meant to address a recent practice in which retail brokers provide customers, without charge, a small number of shares with a very small dollar value as a commercial incentive (for example, upon opening a new account or referring a new customer to the broker).[17] The Exchange stated that Rule 451 does not distinguish between these beneficial owners and beneficial owners that have paid for their shares, so brokers are required to solicit proxies from these accounts and are entitled to reimbursement of their expenses under NYSE and other self-regulatory organization rules.[18] The Exchange further stated that, in certain cases, the issuer can experience a significant increase in its distribution reimbursement expenses solely due to its shares being included in these broker promotional schemes.[19]

The Exchange believes that it would be more appropriate for the broker to bear the proxy distribution costs in these circumstances.[20] According to the Exchange, while the distribution of shares in these broker promotions may result in a significant increase in the number of beneficial owners of an issuer's stock, the generally very small size of each of these positions means that they usually represent a very small percentage of the voting power.[21] As such, according to the Exchange, the costs the issuer incurs in reimbursing the broker for distributing proxies to these accounts is disproportionate to the

[3] *See* Securities Exchange Act Release No. 90653 (December 14, 2020), 85 FR 82539 (December 18, 2020) (''Original Notice''). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2020-98/srnyse202098.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 91011 (January 29, 2021), 86 FR 8246 (February 4, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 91343 (March 17, 2021), 86 FR 15536 (March 23, 2021) (''Order Instituting Proceedings'').

[8] *See* Securities Exchange Act Release No. 91663 (April 23, 2021), 86 FR 22725 (April 29, 2021) (''Amendment No. 2'').

[9] *See* Securities Exchange Act Release No. 92155 (June 11, 2021), 86 FR 32302 (June 17, 2021).

[10] In Amendment No. 3, the Exchange stated that proposed Rule 451A, in specifically stating that no ''fee'' shall be imposed, is meant to apply to the charges that are specified in Rule 451, and would not limit a member organization's eligibility to receive reimbursement for other expenses that are not covered by the specified charges, namely (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically. The Exchange further stated that this approach is consistent with the application of existing fee exclusions under Rule 451. Because Amendment No. 3 does not materially alter the substance of the proposed rule change, Amendment No. 3 is not subject to notice and comment. The full text of Amendment No. 3 is available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2020-98/srnyse202098-8944033-245707.pdf.*

[11] *See* Rules 451 and 465; Amendment No. 2, *supra* note 8, 86 FR at 22726. The ownership of shares in street name means that a shareholder, or ''beneficial owner,'' has purchased shares through a broker-dealer or bank, also known as a ''nominee.'' In contrast to direct ownership, where shares are directly registered in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository, such as the Depository Trust Company. *See* Securities Exchange Act Release No. 70720 (October 18, 2013), 78 FR 63530, 63531 n.14 (October 24, 2013) (order approving SR–NYSE–2013–07) (''2013 Approval Order'').

[12] *See* Rules 451 and 465; 2013 Approval Order, *supra* note 11, 78 FR at 63531.

[13] 17 CFR 240.14b–1; 17 CFR 240.14b–2.

[14] *See* 17 CFR 240.14b–1 and 14b–2; *see also* 2013 Approval Order, *supra* note 11, 78 FR at 63531.

[15] *See* 17 CFR 240.14b–1 and 14b–2; *see also* 2013 Approval Order, *supra* note 11, 78 FR at 63531. Currently, the Supplementary Material to Rule 451, which is cross-referenced by the Supplementary Material to Rule 465, establishes maximum rates at which a NYSE member organization may be reimbursed for expenses incurred in connection with distributing proxy and other materials to beneficial owners.

[16] *See* proposed Rule 451A. None of the fees in the schedule in the Supplementary Material .90 to Rule 451 would be imposable on issuers in these circumstances, but issuers would still be responsible for reimbursing member organizations for any actual postage costs, envelope costs, and communication expenses (excluding overhead) incurred in receiving voting returns, which is consistent with what occurs currently in other contexts where no fees are imposed, *i.e.,* a managed account that contains five or fewer shares or units of the security involved or an account that contains only a fractional share. *See* Amendment No. 3, *supra* note 10. Accordingly, references herein to the distribution costs or expenses for which member organizations are prohibited from seeking reimbursement from issuers under the proposal are meant to refer to the charges specified in Supplementary Material .90 to Rule 451.

[17] *See* Amendment No. 2, *supra* note 8, 86 FR at 22726.

[18] *See id.; see also, e.g.,* FINRA Rule 2251.

[19] *See* Amendment No. 2, *supra* note 8, 86 FR at 22726.

[20] *See id.*

[21] *See id.*

maximum potential vote such shares represent.[22] The Exchange stated that, by contrast, the broker using such a scheme chooses to engage in it because it believes that it will result in a commercial benefit to the broker.[23] In addition, the Exchange stated that recipients of shares without charge from the broker as part of such schemes typically will not be given any choice as to which shares they receive and are therefore not making any investment decision.[24]

The Exchange stated that proposed Rule 451A would not limit a broker's right to reimbursement for distributions to any beneficial owner if any part of that beneficial owner's position in an issuer's securities was received by any means other than a transfer without charge from the broker.[25] The Exchange also stated that proposed Rule 451A would not limit a broker's right to receive reimbursement under Rules 451 and 465 unless that broker itself transferred the issuer's shares without charge into the account of the beneficial owner.[26] The Exchange further stated that Rules 451 and 465 would continue to apply to all distributions, so the broker would continue to be fully obligated to solicit votes from, and make other distributions on behalf of issuers to, all beneficial owners notwithstanding the limitations on reimbursement of expenses imposed by proposed Rule 451A.[27]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the requirements of the Act and the rules and regulations thereunder.[28] In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with Section 6(b)(4) of the Act,[29] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities; and with Section 6(b)(5) of the Act,[30] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also believes that the proposal as modified is consistent with Rule 14b–1 under the Act.[31]

The Commission raised concerns about the proposal in the Order Instituting Proceedings,[32] but the Commission believes that the Exchange has amended the proposal adequately to address those concerns. Originally, proposed Rule 451A would have prohibited an NYSE member organization from imposing distribution fees on an issuer in cases where the member provided the shares or units of the securities held in the beneficial owner's account at no cost or at a price ''substantially less than the market price.'' [33] In the Order Instituting Proceedings, the Commission stated that the Exchange did not explain how it would determine whether a price is ''substantially less than the market price'' or otherwise provide guidance on the meaning of that term.[34] In Amendment No. 2, the Exchange addressed the Commission's concern by eliminating that term from the proposed rule, resulting in a rule with a more clearly defined application to nominee accounts that contain only shares or units of the securities involved that were transferred to the account holder by the member at no cost.

The Commission also stated in the Order Instituting Proceedings that the initial proposal did not explain why it is consistent with the Act for the proposed reimbursement prohibition not to apply if a customer transferred its account to a new broker or held any shares of the issuer in its account other than those received through a below-market price transfer from the member seeking reimbursement.[35] Additionally, the Commission stated that the initial proposal did not address the feasibility of tracking shares held by a particular beneficial owner where the eligibility for reimbursement may change over time.[36] The Exchange addressed these concerns in Amendment No. 2 by clarifying that it would be impossible for the new broker in these circumstances to track whether the shares of a specific issuer transferred into its custody had all been received by the beneficial owner without charge from another broker.[37] In addition, according to the Exchange, the new broker would not have received the same commercial benefit as the original broker that transferred the shares without charge to its customers.[38] For these reasons, the Exchange stated that it is impracticable to extend the proposed reimbursement prohibition to the new broker and reasonable to limit its application to the original broker that transferred the shares without charge.[39]

Further, in the Order Instituting Proceedings, the Commission stated that the Exchange had not explained how the proposal would be consistent with Rule 14b–1 under the Act [40] in light of the fact that a broker-dealer would be required to distribute proxies or other materials but be precluded from seeking reimbursement of its expenses in the applicable circumstances.[41] In Amendment No. 2, the Exchange stated that any broker that is prohibited from charging fees under the proposal would continue to be reimbursed for its aggregate expenses with respect to proxy distribution, as the prohibition on distribution fees would be limited to those accounts in which the only shares of the applicable issuer are shares received without charge from that broker.[42] The Exchange stated that, as such, the effect of the proposal would be to reduce the overall reimbursement received by that broker for a distribution, but not to eliminate that reimbursement.[43]

Commenters broadly supported the proposal.[44] One commenter stated that

[22] *See id.*

[23] *See id.*

[24] *See id.,* 86 FR at 22727.

[25] *See id.,* 86 FR at 22726.

[26] *See id.* Specifically, the Exchange stated that if a beneficial owner transferred shares received in this manner into an account at another broker, Rule 451A would not preclude that other broker from claiming reimbursement under Rules 451 and 465.

[27] *See id.*

[28] In approving this proposed rule change, as modified by Amendment Nos. 2 and 3, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78f(b)(4).

[30] 15 U.S.C. 78f(b)(5).

[31] 17 CFR 240.14b–1.

[32] *See* Order Instituting Proceedings, *supra* note 7.

[33] *See* Original Notice, *supra* note 3.

[34] *See* Order Instituting Proceedings, *supra* note 7, 86 FR at 15537.

[35] *See id.,* 86 FR at 15537–38.

[36] *See id.,* 86 FR at 15538.

[37] *See* Amendment No. 2, *supra* note 8, 86 FR at 22726.

[38] *See id.,* 86 FR at 22726–27.

[39] *See id.,* 86 FR at 22727.

[40] 17 CFR 240.14b–1.

[41] *See* Order Instituting Proceedings, *supra* note 7, 86 FR at 15538.

[42] *See* Amendment No. 2, *supra* note 8, 86 FR at 22727.

[43] *See id.*

[44] *See* letters from: Paul Conn, President, Global Capital Markets, Computershare, dated January 11, 2021 (''First Computershare Letter''), at 2–3; Niels Holch, Executive Director, Shareholder Communications Coalition, dated January 20, 2021 (''Coalition Letter''), at 5 n.14; Paul Conn, President, Global Capital Markets, Computershare, dated April 14, 2021 (''Second Computershare Letter''), at 4;

Continued

the recent broker practice of gifting small amounts of securities to retail brokerage clients as a promotional measure has caused significant increases in proxy costs for some issuers, and expressed the view that the proposal would alleviate much of the cost impact to issuers from this broker practice, particularly for accounts defaulted to e-delivery.[45] Two commenters are issuers that stated that they experienced dramatic increases in proxy distribution costs for the 2020 proxy season, which they both attributed to the inclusion of their shares in a retail broker's promotional free share program.[46] Both commenters asserted that the issuer should not bear the proxy distribution costs that arise due to their shares being included in such a broker promotional program.[47] Another commenter stated that the promotions the proposed rule change is designed to address provide commercial benefits to broker-dealers without providing any parallel benefits to public companies.[48]

The Commission believes that the proposal as modified is consistent with Sections 6(b)(4) and 6(b)(5) of the Act, as well as Rule 14b–1. The proposed rule would appropriately reallocate from an issuer to a broker the fee-related expense of distributing proxy and other materials to beneficial owners in the limited circumstance where the beneficial owner's account contains only shares or units of the issuer's securities that were transferred to the beneficial owner by the broker at no cost.[49] This circumstance would appear to arise typically due to a broker promotional program that, as stated by the Exchange, the broker chooses to engage in because it believes it will result in a commercial benefit to the broker and, as noted by one commenter,[50] provides commercial benefits to the broker without providing any parallel benefits to the issuer.[51] The Commission therefore believes that the proposal is reasonably designed to result in a more equitable and not unfairly discriminatory allocation of the costs of the distribution of proxy and other materials, consistent with Sections 6(b)(4) and 6(b)(5) of the Act.

The Commission also believes that the proposal is consistent with the Section 6(b)(5) goal of protecting investors and the public interest, and is consistent with Rule 14b–1, because the cost reallocation effectuated by the proposal would not diminish brokers' obligations to distribute issuer materials to accounts in which securities are held in street name, including accounts covered by the proposal, *i.e.,* that contain only shares or units of the securities involved that were transferred to the account holder by the member organization at no cost. Moreover, this cost reallocation does not preclude the broker from receiving assurance of reimbursement of its ''reasonable expenses,'' both direct and indirect, consistent with Rule 14b–1. In previously approving, in 2013, an Exchange proposal that, among other things, eliminated fees for distributing issuer materials to managed accounts with five or fewer shares of the issuer's securities, the Commission acknowledged that any general rule setting forth an industry-wide fee schedule for the reimbursement of reasonable broker-dealer expenses necessarily will not precisely reimburse the actual expenses incurred by individual firms.[52] Here, a broker with accounts covered by the proposal may not receive precise reimbursement for its expenses incurred for a distribution pertaining to the issuer whose shares it gave away at no cost, but the broker would continue to be reasonably reimbursed for its expenses, both direct and indirect, in the aggregate.[53] The proposal would not eliminate a broker's ability to charge reimbursement fees for distributing an issuer's materials to accounts that hold any shares or units of the issuer's securities that the beneficial owner purchased or acquired in any way other than from the broker at no cost. Nor would the proposal affect the broker's ability to charge reimbursement fees for distributing materials on behalf of issuers whose shares it did not give away at no cost. Any shortfall in precise reimbursement of expenses experienced by the broker because of the proposal would be confined to fee-related expenses attributable to distributing an issuer's materials to beneficial owners that receive those materials solely due to the broker's own promotional efforts.

Based on the foregoing, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder.

Kim Warnica, Senior Vice President, General Counsel and Secretary, Marathon Oil Corporation, dated April 27, 2021 (''Marathon Letter''); Patrick J. McEnany, Chairman and CEO, Catalyst Pharmaceuticals, Inc., dated June 9, 2021 (''Catalyst Letter''). An additional commenter appears to suggest that member organizations should be reimbursed in certain circumstances that are not covered by the proposal or the rules the proposal is amending. *See* letter from David, dated June 14, 2021.

[45] *See* First Computershare Letter at 2–3. This commenter also stated that while it understood that the accounts that receive such ''gifted'' securities generally are set for electronic communications, as a technical matter, if a street-name holder of gifted securities receives hardcopy proxy communications rather than electronic delivery, the issuer will still bear increased costs from printing the materials to be disseminated by the broker. *See id.* Even if an issuer bears increased printing costs due to its shares being included in a broker promotional program, as discussed below, the Commission believes that the proposal is consistent with the Act because, among other things, the proposed rule's prohibition against imposing fees on issuers would result in a more equitable and not unfairly discriminatory reallocation to brokers of significant costs typically associated with the distribution of proxies and other materials in the circumstances addressed by the proposal.

[46] *See* Marathon Letter at 1–2; Catalyst Letter at 2. One of these commenters stated that its 2020 proxy distribution bill was 2,402 percent higher than the 2019 bill, representing distribution to 3,051 percent more stockholders in 2020 than in 2019. *See* Marathon Letter at 1. The commenter noted that as of its 2020 stockholder meeting date, 80 percent of the stockholders that held the commenter's shares through accounts at the particular retail broker held five shares or less. *See id.* The commenter believes that, for the vast majority of the accounts holding fewer than five shares, the shares were chosen by that retail broker, not the beneficial owners. *See id.* at 2. Similarly, the other issuer commenter stated that the number of holders of its common shares who hold their shares through that retail broker increased by more than 2,057 percent from 2019 to 2020, and its proxy distribution bill from the distribution platform that services that retail broker grew 1,779 percent from 2019 to 2020 (from approximately $12,500 to approximately $234,000). *See* Catalyst Letter at 1–2. The commenter believes the increase in both shareholders and costs is directly attributable to the retail broker and its promotional activities. *See id.* at 2.

[47] *See* Marathon Letter at 2; Catalyst Letter at 2.

[48] *See* Coalition Letter at 5 n.14.

[49] *See supra* note 25 and accompanying text.

[50] *See* Coalition Letter at 5 n.14. *See also* Catalyst Letter at 2.

[51] One commenter stated that, if, after receiving gifted shares, an investor subsequently chooses to increase its share ownership and makes an investment decision to buy additional shares, it would be appropriate to shift the cost of proxy distribution back to the issuer. *See* Marathon Letter at 2. As stated above, the Exchange's proposal would affect accounts that only include shares that were transferred to the account holder by the broker at no cost, and accordingly, if a street name investor were to be induced to purchase or otherwise acquire any additional shares of the issuer as a result of being gifted shares by a broker, the issuer would then bear the proxy distribution costs for that investor's account. *See supra* note 25 and accompanying text.

[52] *See* Rule 451, Supplementary Material .90; 2013 Approval Order, *supra* note 11, 78 FR at 63546 (stating that this rule with respect to managed accounts was designed to provide reasonable reimbursement of the overall expenses of broker-dealers in the aggregate, and the extent of reimbursement of any individual firm would vary depending on the specifics of its account population). One commenter analogized the scenario presented by this proposal to the Exchange's prior proposal to eliminate fees for distributing issuer materials to managed accounts with five or fewer shares of the issuer's securities. *See* Marathon Letter at 2.

[53] As clarified in Amendment No. 3, *supra* note 10, issuers must reimburse brokers for any non-fee-related expenses—*i.e.,* any actual, out-of-pocket postage, envelope, and communication expenses incurred in receiving voting returns—notwithstanding the proposed rule.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[54] that the proposed rule change (SR–NYSE–2020–98), as amended by Amendment Nos. 2 and 3, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

J. Matthew DeLesDernier,

Assistant Secretary.

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[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92661; File No. SR–MIAX–2021–37]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Express Interface Ports

August 13, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 2021, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to amend certain port fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt a tiered-pricing structure for additional Limited Service MIAX Express Interface (''MEI'') Ports[3] available to Market Makers.[4] The Exchange believes a tiered-pricing structure will encourage Market Makers to be more efficient and economical when determining how to connect to the Exchange. This should also enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System.[5]

Additional Limited Service MEI Port Tiered-Pricing Structure

The Exchange proposes to amend the fees for additional Limited Service MEI Ports. Currently, the Exchange allocates two (2) Full Service MEI Ports[6] and two (2) Limited Service MEI Ports[7] per matching engine[8] to which each Market Maker connects. Market Makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. The Full Service MEI Ports, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports for which they are assessed a $100 monthly fee for each additional Limited Service MEI Port for each matching engine. This fee has been unchanged since 2016.[9]

The Exchange now proposes to move from a flat monthly fee per additional Limited Service MEI Port for each matching engine to a tiered-pricing structure per additional Limited Service MEI Ports for each matching engine under which the monthly fee would vary depending on the number of additional Limited Service MEI Ports the Market Maker elects to purchase. Specifically, the Exchange will continue to provide the first and second additional Limited Service MEI Ports for each matching engine free of charge, as described above, per the initial allocation of Limited Service MEI Ports that Market Makers receive. Specifically, (i) the third and fourth additional Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of $100 to $150 per port; (ii) the fifth and sixth additional Limited Service MEI Ports for engine matching engine will increase from the current flat monthly fee of $100 to $200 per port; and (iii) the seventh additional Limited Service MEI Port, and each Limited Service MEI Port for each matching engine purchased thereafter, will increase from the current monthly flat fee of $100 to $250 per port (collectively, the ''Proposed Access Fees'').

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is

[3] MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. *See* Fee Schedule, note 26.

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100.

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* Fee Schedule, Section 5)d)ii), note 27.

[7] Limited Service MEI Ports provide Market Makers with the ability to send eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per matching engine. *See* Fee Schedule, Section 5)d)ii), note 28.

[8] A ''matching engine'' is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines. *See* Fee Schedule, Section 5)d)ii), note 29.

[9] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [12] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Exchange believes the proposal to move from a flat fee per month to a tiered-pricing structure is reasonable, equitably allocated and not unfairly discriminatory because the Exchange believes the proposed structure would encourage firms to be more economical and efficient in the number of additional Limited Service MEI Ports they purchase. The Exchange believes this will enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System.

The Exchange notes that the firms that are primarily order routers seeking best-execution do not utilize Limited Service MEI Ports on MIAX. Therefore, the fees described in the proposed tiered-pricing structure will only be allocated to market making firms that engage in advanced trading strategies and typically request multiple Limited Service MEI Ports. Accordingly, the firms engaged in market making business generate higher costs by utilizing more of the Exchange's resources. The market making firms that purchase higher amounts of Limited Service MEI Ports tend to have specific business oriented market making and taking strategies, as opposed to firms simply engaging in best-execution order routing business. The use of such additional Limited Service MEI Ports is entirely voluntary.

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange deems port fees to be access fees. It records these fees as part of its ''Access Fees'' revenue in its financial statements. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. The Exchange believes the Proposed Access Fees will allow the Exchange to offset expense the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees.

In order to determine the Exchange's costs to provide the access services associated with the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the access services associated with the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice. The Exchange is also providing detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the cost to the Exchange to provide the access services associated with the Proposed Access Fees.

In order to determine the Exchange's projected revenues associated with the Proposed Access Fees, the Exchange analyzed the number of Market Makers currently utilizing Limited Service MEI Ports, and, utilizing a recent monthly billing cycle representative of 2021 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants, discounts that can be achieved due to lower trading volume and vice versa, market participant consolidation, etc. Additionally, the Exchange similarly does not factor into its analysis future cost growth or decline. The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2020. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2020 or for the first seven months of 2021, the Exchange believes its 2020 Audited Unconsolidated Financial Statement is not useful for analyzing the reasonableness of the total annual revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services.

* * * * *

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

BOX Network (the ''BOX Order'').[13] On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[14] Accordingly, the Exchange believes that the Proposed Access Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they will not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange, and its affiliates MIAX Pearl and MIAX Emerald, LLC (''MIAX Emerald''), to establish or increase other non-transaction fees.[15] Accordingly, the Exchange believes that the Commission should find that the Proposed Access Fees are consistent with the Act.

* * * * *

As of July 30, 2021, the Exchange had a market share of only 6.21% of the U.S. equity options industry for the month of July 2021.[16] The Exchange is not aware of any evidence that a market share of approximately 6–7% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would join or access the Exchange, and existing market participants would discontinue all or some of their access services.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their access (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such market participant, did not make business or economic sense for such market participant to access such exchange. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do drop their access to exchanges based on non-transaction fee pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04). The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Similarly, the Exchange's affiliate, MIAX Emerald, noted in a recent filing that once MIAX Emerald issued a notice that it was instituting MEI Port fees, among other non-transaction fees, one MIAX Emerald Member dropped its access to MIAX Emerald as a result of those fees.[17] Accordingly, these examples show that if an exchange sets too high of a fee for ports and/or other non-transaction fees, including other access fees, for its relevant marketplace, market participants can choose to drop their access to such exchange.

In order to provide more detail and to quantify the Exchange's costs associated with providing access to the Exchange in general, the Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its System for market participants is not fixed. The Exchange believes the Proposed Access Fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Exchange only has four primary sources of revenue: Transaction fees, access fees (which includes the Proposed Access Fees), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these access services versus the total annual revenue that the Exchange projects to collect in connection with services associated with the Proposed Access Fees. For 2021,[18] the total annual expense for providing the access services associated with the Proposed Access Fees is projected to be approximately $1.32 million. The approximately $1.32 million in projected total annual expense is comprised of the following, all of which are directly related to the access services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the Proposed Access Fees.[19] As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited

[13] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[14] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[15] *See* Securities Exchange Act Release Nos. 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR–PEARL–2021–01) (proposal to increase connectivity fees); 91460 (April 2, 2021), 86 FR 18349 (SR–EMERALD–2021–11) (proposal to adopt port fees, increase connectivity fees, and increase additional limited service ports); 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03) (proposal to adopt trading permit fees).

[16] *See* ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited July 30, 2021).

[17] *See* Securities Exchange Act Release No. 91460 (April 2, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees, Increase Certain Network Connectivity Fees, and Increase the Number of Additional Limited Service MIAX Emerald Express Interface Ports Available to Market Makers) (adopting tiered MEI Port fee structure ranging from $5,000 to $20,500 per month).

[18] The Exchange has not yet finalized its 2021 year end results.

[19] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

Unconsolidated Financial Statements.[20] The $1.32 million in projected total annual expense is directly related to the access services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed expense items in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the access services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide access services associated with the Proposed Access Fees.

For 2021, total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the access services associated with the Proposed Access Fees, is projected to be $0.16 million. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking the Exchange's office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[21] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.). For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the access services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 4.95% of the total applicable Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX Pearl and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees, approximately 2.64% of the total applicable Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 4.95% of the total applicable SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider

[20] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87875 (December 31, 2019), 85 FR 770 (January 7, 2020) (SR–MIAX–2019–51). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2021 Form 1 Amendment, which will be filed in 2022.

[21] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 4.95% of the total applicable hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.

For 2021, total projected internal expense, relating to the internal costs of the Exchange to provide the access services associated with the Proposed Access Fees, is projected to be $1.16 million. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the access services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, and business that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the access services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the access services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange's employee compensation and benefits expense relating to providing the access services associated with the Proposed Access Fees is projected to be approximately $0.91 million, which is only a portion of the $12.6 million total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), and Trade Operations. As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of access services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 7.24% of the total applicable employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange's depreciation and amortization expense relating to providing the services associated with the Proposed Access Fees is projected to be $0.22 million, which is only a portion of the $4.8 million total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the access services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 4.60% of the total applicable depreciation and amortization expense, as these access services would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange's occupancy expense relating to providing the services associated with the Proposed Access Fees is projected to be $0.03 million, which is only a portion of the $0.6 million total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the access services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 150 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the access services associated with the Proposed Access Fees. Without this office space, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. Accordingly, the Exchange believes it is reasonable to

allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 4.69% of the total applicable occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange notes that a material portion of its total overall expense is allocated to the provision of access services (including connectivity, ports, and trading permits). The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources of fees to recover their costs; thus, the Exchange believes it is reasonable to allocate a material portion of their total overall expense towards access fees.

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. To illustrate, on a going-forward, fully-annualized basis, the Exchange projects that annualized revenue for providing the access services associated with the Proposed Access Fees would be approximately $3.21 million per annum, based on a recent billing cycle. The Exchange projects that its annualized expense for providing the services associated with the Proposed Access Fees will be approximately $1.32 million per annum. Accordingly, on a fully-annualized basis, the Exchange believes its total projected revenue for providing the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit, as the Exchange will make a profit margin of approximately 59% ($3.21 million in total revenue minus $1.32 million in expense = $1.89 million in profit per annum). Additionally, this profit margin does not take into account the cost of capital expenditures (''CapEx'') the Exchange projects to spend each year on CapEx going forward.

For the avoidance of doubt, none of the expenses included herein relating to the access services associated with the Proposed Access Fees relate to the provision of any other services offered by the Exchange or its affiliates. Stated differently, no expense amount of the Exchange is allocated twice. The Exchange notes that, with respect to expenses associated with the Exchange's affiliates, MIAX Pearl and MIAX Emerald, those expenses are accounted for separately and are not included within the scope of this filing. Stated differently, no expense amount of the Exchange is also allocated to MIAX Pearl or MIAX Emerald.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the access services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to providing access to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing access services. The Proposed Access Fees are intended to recover the Exchange's costs of providing access to its System. Accordingly, the Exchange believes that the Proposed Access Fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to the Exchange versus the projected annual revenue from the Proposed Access Fees.

The Exchange believes the proposed changes are reasonable, equitably allocated and not unfairly discriminatory, and do not result in a ''supra-competitive'' [22] profit. Of note, the Guidance defines ''supra-competitive profit'' as profits that exceed the profits that can be obtained in a competitive market.[23] With the proposed changes, the Exchange anticipates it will have a profit margin of approximately 59% based on the Proposed Access Fees. Based on the 2020 Audited Financial Statements of competing options exchanges (since the 2021 Audited Financial Statements will likely not become publicly available until early July 2022, after the Exchange has submitted this filing), the Exchange's profit margin is similar to or below the operating profit margins of other competing exchanges. For example, Nasdaq ISE, LLC's (''ISE'') operating profit margin for all of 2020 was approximately 85%; Nasdaq PHLX LLC's (''PHLX'') operating profit margin for all of 2020 was approximately 49%; Nasdaq's operating profit margin for all of 2020 was approximately 62%; NYSE Arca, Inc.'s (''Arca'') operating profit margin for all of 2020 was approximately 55%; NYSE American LLC's (''Amex'') operating profit margin for all of 2020 was approximately 59%; Cboe's operating profit margin for all of 2020 was approximately 74%; and BZX's operating profit margin for all of 2020 was approximately 52%.

The Exchange further believes its proposed fees are reasonable, equitably allocated and not unfairly discriminatory because the Exchange believes that it benefits overall competition in the marketplace to allow relatively new entrants like the Exchange and its affiliates, MIAX Pearl and MIAX Emerald, to propose fees that may help these new entrants recoup their substantial investment in building out costly infrastructure. The Exchange and its affiliates have historically set their fees purposefully low in order to attract business and market share. The Exchange notes that the concept of a tiered-pricing structure for ports is not new or novel.[24]

[22] *See supra* note 14.

[23] *See id.*

[24] *See* Cboe BZX Exchange, Inc. (''BZX'') Options Fee Schedule, Options Logical Port Fees, Ports with Bulk Quoting Capabilities (charging $1,500/month for the 1st and 2nd port, $2,500/month for the 3rd port or more); Cboe Exchange, Inc. (''Cboe'') Fee Schedule, Logical Connectivity Fees (charging $750/month per port for BOE/FIX Logical Ports 1 to 5 and $800/month per port for BOE/FIX Logical Ports greater than 5; charging $1,500/month per port for BOE Bulk Logical Ports 1 to 5, $2,500/month per port for BOE Bulk Logical Ports 6 to 30, and $3,000/month per port for BOE Bulk Logical Ports greater than 30); The Nasdaq Stock Market LLC (''Nasdaq''), Options 7, Pricing Schedule, Section 3 Nasdaq Options Market—Ports and Other Services (charging $1,500/month per port for first

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Exchange believes the proposal to move from a flat fee per month to a tiered-pricing structure is reasonable, equitably allocated and not unfairly discriminatory because the Exchange believes the proposed structure would encourage firms to be more economical and efficient in the number of Limited Service MEI Ports they purchase. The Exchange believes this will enable the Exchange to better monitor and provide access to the Exchange's network in order to ensure that the Exchange meets its obligations under the Act such that access to the Exchange is offered on terms that are not unfairly discriminatory, as well as to ensure sufficient capacity and headroom in the System.

There is also no regulatory requirement that any market participant access any one options exchange, that each Market Maker access the Exchange utilizing more than the two free Limited Service MEI Ports that the Exchange provides, access the Exchange in a particular capacity, or trade any particular product offered on the Exchange. Moreover, membership is not a requirement to participate on the Exchange. A market participant may submit orders to the Exchange via a Sponsored User.[25] Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer. Based on a recent analysis conducted by Cboe, as of October 21, 2020, only three (3) of the broker-dealers, out of approximately 250 broker-dealers, were members of at least one exchange that lists options for trading and were members of all 16 options exchanges.[26] Additionally, the Cboe Fee Filing found that several broker-dealers were members of only a single exchange that lists options for trading and that the number of members at each exchange that trades options varies greatly.[27]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

With respect to intra-market competition, the Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As stated above, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that the proposed pricing structure for is associated with relative usage of the various market participants. Firms that are primarily order routers seeking best-execution do not utilize Limited Service MEI Ports on MIAX and therefore will not pay the fees associated with the tiered-pricing structure. Rather, the fees described in the proposed tiered-pricing structure will only be allocated to market making firms that engage in advanced trading strategies and typically request multiple Limited Service MEI Ports. Accordingly, the firms engaged in market making business generate higher costs by utilizing more of the Exchange's resources. The market making firms that purchase higher amounts of Limited Service MEI Ports tend to have specific business oriented market making and taking strategies, as opposed to firms simply engaging in best-execution order routing business. Additionally, the use of such additional Limited Service MEI Ports is entirely voluntary.

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to access all options exchanges. The Exchange operates in a highly competitive environment, and as discussed above, its ability to price access and ports is constrained by competition among exchanges and third parties. There are other options markets of which market participants may access in order to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. For example, there are 15 other U.S. options exchanges, which the Exchange must consider in its pricing discipline in order to compete for market participants. In this competitive environment, market participants are free to choose which competing exchange to use to satisfy their business needs. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[28] and Rule 19b–4(f)(2)[29] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

5 ports, $1,000/month per port for the next 15 ports, and $500/month per port for all ports over 20).

[25] *See* Exchange Rule 210. The Sponsored User is subject to the fees, if any, of the Sponsoring Member. The Exchange notes that the Sponsoring Member is not required to publicize, let alone justify or file with the Commission its fees, and as such could charge the Sponsored User any fees it deems appropriate, even if such fees would otherwise be considered supra-competitive, or otherwise potentially unreasonable or uncompetitive.

[26] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105) (the ''Cboe Fee Filing''). The Cboe Fee Filing cited to the October 2020 Active Broker Dealer Report, provided by the Commission's Office of Managing Executive, on October 8, 2020.

[27] *Id.*

[28] 15 U.S.C. 78s(b)(3)(A)(ii).

[29] 17 CFR 240.19b–4(f)(2).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2021–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2021–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2021–37 and should be submitted on or before September 9, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17762 Filed 8–18–21; 8:45 am]

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[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92663; File No. SR–NASDAQ–2021–061]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Listing Rule 5910 To Modify the Application Fee for Companies Listing Under IM–5101–2

August 13, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Listing Rule 5910 to modify the application fee for companies listing under IM–5101–2 (companies whose business plan is to complete one or more acquisitions) on the Nasdaq Global Market.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to revise the application fee payable by Acquisition Companies listing on the Nasdaq Global Market to make it the same as the application fee payable by Acquisition Companies listing on the Nasdaq Capital Market, as described in more details below.

Historically, companies whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, as described in IM–5101–2, (''Acquisition Companies'') would choose to list on the Nasdaq Capital Market instead of the Nasdaq Global Market, primarily because it had lower fees. Recently Nasdaq modified the Entry and All-Inclusive Annual Listing Fees for Acquisition Companies listing on the Nasdaq Global Market.[3] As a result, the Entry and All-Inclusive Annual Listing Fees for Global Market Acquisition Companies are currently identical to the fees charged to Capital Market Acquisition Companies.

A company applying to list on Nasdaq is required to submit a non-refundable initial application fee with its application, which is subsequently credited towards the Entry Fee payable upon listing. A company listing on the Global Market is required to submit a non-refundable $25,000 initial application fee, whereas the application fee on the Capital Market is $5,000.[4]

Nasdaq proposes to revise the application fee for Acquisition Companies listing on the Nasdaq Global Market to make it the same as the application fee Acquisition companies pay on the Capital Market.

Nasdaq has limited resources and charges companies applying to list on Nasdaq an application fee to offset the cost of conducting its regulatory review in connection with the initial listing of the company. As explained above, the application fee is subsequently credited towards the Entry Fee payable upon listing. In Nasdaq's experience, conducting an initial listing review for an Acquisition Company is less costly than conducting an initial listing review for other types of companies for a number of reasons. Specifically, review of an Acquisition Company's IPO application is generally much simpler

[3] Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021).

[4] *See* Listing Rules 5910(a)(11) and 5920(a)(11).

and quicker than an application of an operating company because an Acquisition Company has no underlying operating business. For the same reason, an Acquisition Company's SEC filings and IPO documentation are much less detailed and its financial statements are simple and do not have historical financials. An Acquisition Company's registration statement does not have an operating business to describe and has no risk factors related to an operating business. Further, Acquisition Companies always qualify as Emerging Growth Companies under Section 2(a)(19) of the Securities Act, which results in scaled requirements for narrative disclosure and financial reporting.

Accordingly, Nasdaq believes it is appropriate to charge Acquisition Companies listing on the Global Market a smaller application fee than the fee applicable to operating companies. Nasdaq notes that, as described above, the application fee is a part of the Entry Fee, and therefore, the overall Entry Fee payable by an Acquisition Company listing on Nasdaq remains unchanged under this proposal. Accordingly, this proposal has no financial impact on the level of listing fees collected from issuers that list on Nasdaq and thus has no impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a preliminary matter, Nasdaq competes for listings with other national securities exchanges and companies can easily choose to list on, or transfer to, those alternative venues. As a result, the fees Nasdaq can charge listed companies are constrained by the fees charged by its competitors and Nasdaq cannot charge prices in a manner that would be unreasonable, inequitable, or unfairly discriminatory.[7]

The proposal is being implemented to avoid charging a higher application fee to an Acquisition Company that is listing on the Nasdaq Global Market over what such company is required to pay when applying to list on the Capital Market. As a result of a recent rule change, the Entry and All-Inclusive Annual Listing Fees for Global Market Acquisition Companies are currently identical to the fees charged Capital Market Acquisition Companies.[8] This proposal would fully equalize listing fees and the timing of paying such fees for Acquisition Companies listing on the Capital and Global Markets. Nasdaq believes it is equitable under Section 6(b)(4) of the Act[9] to charge Global Market Acquisition Companies the same application fee as Capital Market Acquisition Companies given that they are treated the same, and their applications are no more complicated, regardless of whether they are applying to list on the Global or Capital Market.

Moreover, the Exchange believes that it is not unfairly discriminatory to charge Acquisition Companies application fee different from the fee applicable to operating companies listing on the Global Market, because Acquisition Companies differ in some important respects from traditional operating companies and such differences make it less costly for Nasdaq to conduct an initial listing review. Specifically, an Acquisition Company's IPO process is generally much simpler and quicker than a regular IPO because an Acquisition Company has no underlying operating business. For the same reason, an Acquisition Company's SEC filings and IPO documentation, including its financial statements, are simple and do not have historical discussions or financials. An Acquisition Company's registration statement does not have an operating business to describe and has no risk factors related to an operating business. Further, Acquisition Companies always qualify as Emerging Growth Companies under Section 2(a)(19) of the Securities Act which results in scaled requirements for narrative disclosure and financial reporting. Therefore, Nasdaq believes that it is appropriate, and not unfairly discriminatory, to charge lower application fee to Global Market Acquisition Companies than application fee that are charged to operating companies listed on the Nasdaq Global Market.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed modified application fee will be applicable to all similarly situated issuers on the same basis and will eliminate an existing distinction between Acquisition Companies listing on the Capital and Global Markets. The Exchange does not believe that the proposed fees will have any meaningful effect on the competition among issuers listed on the Exchange.

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition. In that regard, Nasdaq notes that while the New York Stock Exchange charges most companies an Initial Application Fee of $25,000 in connection with applying to list an equity security, Acquisition Companies are not subject to the Initial Application Fee.[10]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] In that regard, Nasdaq notes that while the New York Stock Exchange charges most companies an Initial Application Fee of $25,000 in connection with applying to list an equity security, Acquisition Companies are not subject to the Initial Application Fee. *See* Sections 902.03 and 902.11 of the NYSE Listed Company Manual.

[8] Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Sections 902.03 and 902.11 of the NYSE Listed Company Manual.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–061 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–061. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–061 and should be submitted on or before September 9, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17761 Filed 8–18–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92668; File No. SR–NYSEAMER–2021–36]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 952NY To Provide an Option for ATP Holders To Instruct the Exchange To Cancel Marketable Orders if a Series Is Not Opened Within a Specified Time Period

August 13, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 10, 2021, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 952NY (Opening Process) to provide an option for ATP Holders to instruct the Exchange to cancel Marketable orders if a series is not opened within a specified time period. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 952NY (Opening Process) to provide an option for ATP Holders to instruct the Exchange to cancel Marketable[4] orders if a series is not opened within a specified time period.

Rule 952NY sets forth the Exchange's process for opening and reopening a series for trading. Rule 952NY(b) provides that the Exchange will accept market and limit orders for inclusion in the opening auction process (''Auction Process'') until such time as the Auction Process is initiated in that option series. As further provided for in Rule 952NY(b), once the primary market for the underlying security disseminates a quote and a trade that is at or within the quote, the Exchange will open the related option series automatically based on the principles and procedures set forth in paragraphs (A)–(F) of Rule 952NY(b). However, as described in Rule 952NY(b)(D), the Exchange will not conduct an Auction Process if the bid-ask differential for that series is not within an acceptable range, *i.e.,* is not within the bid-ask differential guidelines established in Rule 925NY(b)(4). Because Rule 952NY(b)(D) cross-references the bid-ask differential requirement of Rule 925NY(b)(4), which relates to the obligations of Market Makers in appointed classes, the Exchange will not open a series for trading if Market Makers have not entered quotations in a series that are within such bid-ask differentials. If a series does not open for trading, market and limit orders entered in advance of the Auction Process will remain in the Consolidated Book and will not be routed, even if another exchange opens that series for trading and such orders become Marketable against an away market NBBO.

The Exchange proposes to amend Rule 952NY to provide ATP Holders

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The term ''Marketable'' is defined in Rule 900.2NY(39) to mean, for a Limit Order, the price matches or crosses the NBBO on the other side of the market and that market orders are always considered marketable.

with an option to instruct the Exchange to cancel their Marketable orders if an option series has not been opened within a specified time period. As proposed, new subparagraph (d) to Rule 952NY [5] would provide that an ATP Holder may instruct the Exchange to cancel all Marketable orders in a series, including GTC Orders, if that series has not opened within a designated time period after the Exchange receives notification that the primary market for the underlying security has disseminated a quote and a trade that is at or within the quote. This proposed change is designed to provide ATP Holders that electronically enter orders before Core Trading Hours [6] begin in a multitude of option series with an optional risk protection mechanism for the Exchange to automatically cancel Marketable orders on their behalf. ATP Holders could submit requests to cancel such orders themselves, but would have to monitor which series have been opened on the Exchange. The proposed optional functionality would reduce operational risk for ATP Holders that sent orders in multiple series by providing them with a bulk cancel feature that would instruct the Exchange to cancel orders on their behalf if a series has not been opened by a specified time. Specifically, rather than have Marketable orders remain unexecuted on the Consolidated Book if the option series has not opened on the Exchange within a specified time period, ATP Holders would have the option to instruct the Exchange to cancel such orders back to the ATP Holder. Once cancelled back, the ATP Holder could choose to re-enter such orders on an exchange that has opened that series for trading.

The Exchange further proposes to provide that the Exchange would not cancel any Marketable orders received after the designated time period ends, even if the series has not yet opened. The Exchange believes that if an ATP Holder sends an order in an option series to the Exchange after Core Trading Hours begin, and more than the designated time period after the primary market for the underlying security has opened (*i.e.,* the series open trigger), such ATP Holder should be aware that the Exchange has not opened that series for trading when it sends the order to the Exchange, and therefore intends for such order to be sent to the Exchange even though it has not yet opened that series for trading.

Proposed Rule 952NY(d) would also provide that the designated time period would be two minutes, unless determined otherwise by the Exchange and announced to ATP Holders via Trader Update, in which case the designated time period would not be greater than five minutes. The Exchange believes that a two-minute period would provide time for Market Makers to update their quotes after the Exchange receives the series open trigger so that the bid-ask differential in an option series can be within an acceptable range and therefore the series can open for trading on the Exchange. Specifically, the Exchange has observed that on a typical trading day, nearly 98% of all series are opened by 9:32 a.m. Eastern Time, and nearly 99% of all series are opened by 9:35 a.m. Eastern Time. By waiting two minutes before cancelling orders, the Exchange believes that the majority of series would be opened, thereby minimizing the number of series where there would be a bulk cancel of Marketable orders. In addition, ATP Holders that want to cancel orders less than two minutes after the series open trigger would still be able to submit requests to cancel individual orders. The Exchange further believes that it is appropriate to provide the Exchange with the ability to adjust the designated time period via Trader Update to no more than five minutes because it would provide additional flexibility for the Exchange to respond to the needs of ATP Holders to implement the instruction to cancel Marketable orders on a different time basis. The Exchange believes that a cap of five minutes would be reasonable because very few series remain unopened five minutes after the series open trigger. The Exchange notes that this is an optional instruction, and therefore no ATP Holder is required to use this proposed new risk feature. The Exchange further notes that Exchange flexibility in connection with designating time periods for risk limitation measures is consistent with current Exchange rules.[7]

Finally, proposed Rule 952NY(d) would provide that this instruction would not be available for orders entered by Floor Brokers via the Electronic Order Capture System.[8] The current EOC provider could not systemically apply the proposed optional instruction on a firm-by firm basis and therefore it would not be available to individual Floor Brokers. The Exchange believes that because of the unique role of Floor Brokers on the Exchange to provide manual, high-touch services on behalf of customers, Floor Brokers should not need this optional feature. Specifically, unlike an off-Floor ATP Holder that may be relying on an algorithm to send orders in a multitude of series, a Floor Broker that provides high-touch services would be present on the Trading floor and in a position to monitor whether the Exchange has opened a series, and if not, whether to cancel an order that becomes Marketable.

The Exchange will announce via Trader Update when this proposed optional feature will be available, which, subject to effectiveness of this proposed rule change, the Exchange anticipates will be in early August 2021.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[10] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to provide ATP Holders with an optional risk protection mechanism to instruct the Exchange to cancel Marketable orders in an option series on their behalf if that series has not opened on the Exchange within a

[5] The Exchange proposes a non-substantive amendment to Rule 952NY to renumber current subparagraph (d) to that Rule as subparagraph (e).

[6] The term ''Core Trading Hours'' is defined in Rule 900.2NY(15) to mean the regular trading hours for business set forth in the rules of the primary markets underlying those option classes listed on the Exchange.

[7] *See, e.g.,* Commentary .03 to Rule 928NY (Risk Limitation Mechanism) (providing that the Exchange will ''specify via Trader Update any applicable time period(s) for the Risk Limitation Mechanisms; provided, however, that the Exchange will not specify a time period of less than 100 milliseconds, inclusive of the duration of any trading halt occurring within that time''). The Exchange also provides for flexibility in its rules for other risk mechanism parameters. *See, e.g.,* Rule 967NY(b) (''Unless determined otherwise by the Exchange and announced to ATP Holders via Trader Update, the specified percentage shall be as follows: 100% for the contra-side NBB or NBO priced at or below $1.00; and 50% for the contra-side NBB or NBO priced above $1.00.'')

[8] As defined in Rule 900.2NY(20), the term ''Electronic Order Capture System'' or ''EOC'' means the Exchange's electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions on the Exchange. As further defined, the EOC includes the electronic communications interface between EOC booth terminals and the Floor Broker Hand Held applications and also contains an electronic order entry screen.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

specified time period. The Exchange does not open a series if Market Makers have not quoted within the acceptable range of bid-ask differentials as specified in Rule 925NY(b)(4). However, it is possible that another exchange, with different opening process rules, could have opened that series for trading even if the Exchange does not. If an order that an ATP Holder sent to the Exchange before Core Trading Hours begins becomes Marketable on another exchange before the Exchange opens that series for trading, such ATP Holder could choose to cancel the order and then send it to the other exchange. By providing ATP Holders with an option to instruct the Exchange to cancel their Marketable orders in a series under the specified circumstances, the Exchange would perform this monitoring function on behalf of ATP Holders, thereby reducing their operational risk.

The Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to provide that such instructions would not be applicable to Marketable orders received after the designated time period ends because the Exchange believes that ATP Holders that send orders to the Exchange more than a specified period after series open trigger should be aware that the Exchange has not yet opened that series for trading. Therefore, any orders sent after that designated time period ends were likely purposefully directed to the Exchange even though the Exchange has not yet opened that series for trading.

The Exchange believes that the proposed designated time period of two minutes would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to provide time for Market Makers to update their quotes so that the bid-ask differential in an option series is within an acceptable range and therefore the series can open for trading on the Exchange. The Exchange believes that the proposed two-minute period is reasonable because on a typical trading day, approximately 98% of all series that trade on the Exchange are open. ATP Holders that want to cancel orders less than two minutes after the series open trigger would still be able to submit requests to cancel individual orders. The Exchange further believes that providing the Exchange with flexibility to change the designated time period via Trader Update, provided that it would never be longer than five minutes, would enable the Exchange to respond to the needs of ATP Holders to implement the instruction to cancel Marketable orders on a different time basis. The Exchange believes that the proposed cap of five minutes would remove impediments to and perfect the mechanism of a free and open market and a national market system because on a typical day, approximately 99% of all series are opened by 9:35 a.m. Eastern Time. The Exchange further notes that this proposed risk mechanism would be optional, and therefore ATP Holders would not be required to request that the Exchange cancel unexecuted Marketable orders on their behalf if a series has not opened within the designated time period. In addition, Exchange flexibility in connection with designating time periods for risk limitation measures is consistent with current Exchange rules.[11]

Finally, the Exchange believes that the proposal that the optional instruction would not be available for orders entered by Floor Brokers via the EOC would remove impediments to and perfect the mechanism of a free and open market and a national market system because the current EOC provider could not systemically apply the proposed optional instruction on a firm-by firm basis. The instruction could therefore not be segregated by individual Floor Brokers that each use the EOC. The Exchange believes that because of the unique role of Floor Brokers on the Exchange to provide manual, high-touch services on behalf of customers, Floor Brokers should not need this optional bulk-cancel feature. Specifically, unlike an off-Floor ATP Holder that may be relying on an algorithm to send orders in a multitude of series, a Floor Broker that provides high-touch services would be present on the Trading floor and in a position to monitor whether the Exchange has opened a series, and if not, whether to cancel an order that becomes Marketable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change would impose any burden on intermarket competition, as the proposed rule change is designed to provide an option for ATP Holders to instruct the Exchange to cancel Marketable orders if an option series does not open on the Exchange within a designated time period. The Exchange believes that the proposed rule change would promote intermarket competition because if the Exchange cancels such orders on the instruction of an ATP Holder, such ATP Holder could then choose to route such orders to another exchange that has opened the option series for trading.

The Exchange does not believe that the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change provides for optional functionality. ATP Holders would not be required to use this functionality. In addition, the Exchange believes that because of the unique role of Floor Brokers on the Exchange to provide manual, high-touch services on behalf of customers, Floor Brokers should not need this optional bulk-cancel feature and it would not impose any undue burden on intramarket competition not to provide this optional feature to Floor Brokers. Specifically, unlike an off-Floor ATP Holder that may be relying on an algorithm to send orders in a multitude of series, a Floor Broker that provides high-touch services would be present on the Trading floor and in a position to monitor whether the Exchange has opened a series, and if not, whether to cancel an order that becomes Marketable.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

[11] *See supra* note 7.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative prior to 30 days after the date of the filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because the proposed rule change, as described above, would offer ATP Holders an additional, and optional, risk limitation feature to instruct the Exchange to cancel their Marketable orders if the Exchange does not open an option series within a designated time frame. The Exchange further states that the technology supporting the proposed rule change will be available prior to 30 days after the date of the filing, and the Exchange seeks to implement the proposed rule change without delay. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2021–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2021–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2021–36, and should be submitted on or before September 9, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17757 Filed 8–18–21; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11503]

Certification Related to Foreign Military Financing for Colombia Under Regulations of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021

Pursuant to the authority vested in the Secretary of State, including under section 7045(b)(2)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021 (Div. K, Pub. L. 116–260), I hereby certify that:

(i) The Special Jurisdiction for Peace and other judicial authorities are taking effective steps to hold accountable perpetrators of gross violations of human rights in a manner consistent with international law, including for command responsibility, and sentence them to deprivation of liberty;

(ii) the Government of Colombia is taking effective steps to prevent attacks against human rights defenders and other civil society activists, trade unionists, and journalists, and judicial authorities are prosecuting those responsible for such attacks;

(iii) the Government of Colombia is taking effective steps to protect Afro-Colombian and indigenous communities and is respecting their rights and territory;

(iv) senior military officers responsible for ordering, committing, and covering up cases of false positives are being held accountable, including removal from active duty if found guilty through criminal or disciplinary proceedings; and

(v) the Government of Colombia has investigated and is taking steps to hold accountable Government officials credibly alleged to have directed, authorized, or conducted illegal surveillance of political opponents, government officials, journalists, and human rights defenders, including through the use of assets provided by the United States for combating counterterrorism and counternarcotics for such purposes.

This Certification shall be published in the **Federal Register** and shall be transmitted, along with the accompanying Memorandum of Justification, to Congress.

Dated: July 29, 2021.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2021–17755 Filed 8–18–21; 8:45 am]

BILLING CODE 4710–29–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 32365 (Sub-No. 1)]

Decatur Junction Railway Co.—Amended Lease and Operation Exemption—Lines in Illinois

Decatur Junction Railway Co. (DJR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to renew its lease and continue to operate a line of railroad owned by Central Illinois Shippers, Inc., located between milepost 728.00 at Assumption, Ill., and milepost 745.54 near Elwin, Ill. (the Line).

According to the verified notice, DJR has leased and operated the Line since 1993.[1] DJR states that pursuant to a recently signed Lease & Operating Agreement, the parties agreed to extend DJR's existing lease operations over the Line through December 31, 2025.

DJR states that the Lease & Operating Agreement does not include any interchange commitments. Further, DJR certifies that its projected annual revenues from this transaction will not result in DJR's becoming a Class I or Class II rail carrier and will not exceed $5 million.

The earliest this transaction may be consummated is September 2, 2021, the effective date of the exemption (30 days after the verified notice was filed).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than August 26, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 32365 (Sub-No. 1), should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on DJR's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW, Suite 300, Washington, DC 20037.

According to DJR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: August 16, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2021–17812 Filed 8–18–21; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Decatur Junction Ry.—Lease & Operation Exemption—Lines in Ill.,* FD 32365 (I.C.C. served Oct. 18, 1993, as corrected Oct. 26, 1993).

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will conduct its regular business meeting on September 17, 2021, from Harrisburg, Pennsylvania. Details concerning the matters to be addressed at the business meeting are contained in the Supplementary Information section of this notice. Also the Commission published a document in the **Federal Register** on July 19, 2021, concerning its public hearing on August 12, 2021, held telephonically.

DATES: The meeting will be held on Thursday, September 17, 2021, at 9 a.m.

ADDRESSES: The meeting will be conducted digitally/telephonically from the Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: 717–238–0423; fax: 717–238–2436.

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) Adoption of proposed rulemaking and three groundwater related policies; (2) current expense budget for FY2023; (3) member jurisdictions allocation for 2023; (4) ratification of contracts/grants; (5) emergency certificate extension; and (6) Regulatory Program projects.

This agenda is complete at the time of issuance, but other items may be added, and some stricken without further notice. The listing of an item on the agenda does not necessarily mean that the Commission will take final action on it at this meeting. When the Commission does take final action, notice of these actions will be published in the **Federal Register** after the meeting. Any actions specific to projects will also be provided in writing directly to project sponsors.

Due to the COVID–19 considerations, the meeting will be conducted digitally/telephonically and there will be no physical public attendance. The public is invited to attend the Commission's business meeting. You can access the Business Meeting through a computer (Audio and Video) by following the link: *https://srbc.webex.com/srbc/j.php?MTID=m9e8859e3b62c7e3e7d22d751744c4e3b* then enter meeting number 177 753 8259 and password Sept17CommMtg. You may also participant telephonically by dialing 1–877–668–4493 and entering the meeting number 177 753 8259 followed by the # sign.

Written comments pertaining to items on the agenda at the business meeting that were not subject to the public hearing may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110–1788, or submitted electronically through *www.srbc.net/about/meetings-events/business-meeting.html.* Such comments are due to the Commission on or before September 15, 2021. Comments will not be accepted at the business meeting noticed herein.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: August 16, 2021.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2021–17811 Filed 8–18–21; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: July 1–31, 2021.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e)

and 18 CFR 806.22(f) for the time period specified above:

Water Source Approval—Issued Under 18 CFR 806.22(e)

1. The Hershey Company; Y&S Candies; ABR–202107003, East Hempfield Township, Lancaster County, Pa.; Consumptive use of up to 0.450 mgd; Approval Date: July 20, 2021.

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. Chesapeake Appalachia, L.L.C; Pad ID: ACW; ABR–201107004.R2; Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 14, 2021.

2. Chief Oil & Gas, LLC.; Pad ID: Belawske; ABR–201107002.R2; Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 14, 2021.

3. Chief Oil & Gas, LLC.; Pad ID: Kuziak Drilling Pad #1; ABR–201107028.R2; Fox Township, Sullivan County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 14, 2021.

4. BKV Operating, LLC; Pad ID: Giangrieco Pad; ABR–201107011.R2; Forest Lake Township, Susquehanna County; Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 14, 2021.

5. Cabot Oil & Gas Corporation; Pad ID: GreenwoodR P2; ABR–201605002.R1; Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 14, 2021.

6. Cabot Oil & Gas Corporation; Pad ID: LopatofskyJ P1; ABR–201105015.R1; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 14, 2021.

7. Seneca Resources Company, LLC; Pad ID: DCNR 007 Pad G; ABR–201605005.R1; Shippen Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 14, 2021.

8. Chesapeake Appalachia, L.L.C.; Pad ID: Burns; ABR–201107038.R2; Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 15, 2021.

9. Chesapeake Appalachia, L.L.C.; Pad ID: Layton; ABR–201107037.R2; Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 15, 2021.

10. Chesapeake Appalachia, L.L.C.; Pad ID: Oilcan; ABR–201106013.R2; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 15, 2021.

11. Chesapeake Appalachia, L.L.C.; Pad ID: SJW; ABR–201107003.R2; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 15, 2021.

12. Range Resources—Appalachia LLC; Pad ID: Shipman-Goodwill Unit #1H–#4H Drilling Pad; ABR–201104016.R2; Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 15, 2021.

13. Chesapeake Appalachia, L.L.C.; Pad ID: A&M Pad; ABR–202107002; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 19, 2021.

14. XTO Energy, Inc.; Pad ID: Buck Unit A; ABR–201107041.R2; Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 21, 2021.

15. Seneca Resources Company, LLC; Pad ID: Gamble Pad R; ABR–201606001.R1; Eldred Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 21, 2021.

16. Seneca Resources Company, LLC; Pad ID: Drake 274; ABR–201106003.R2; Lawrence Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 21, 2021.

17. Range Resources—Appalachia, LLC; Pad ID: Mohawk South Unit Well Pad; ABR–201606002.R1; Gallagher Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 21, 2021.

18. ARD Operating, LLC; Pad ID: Larrys Creek F&G Pad C; ABR–201105014.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 26, 2021.

19. Chesapeake Appalachia, L.L.C.; Pad ID: Fisher; ABR–201107047.R2; Wysox Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 26, 2021.

20. Chesapeake Appalachia, L.L.C.; Pad ID: Paul; ABR–201107048.R2; Ulster Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 26, 2021.

21. Chief Oil & Gas, LLC; Pad ID: Jacobson Unit Pad; ABR–201607002.R1; Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: July 28, 2021.

22. Chief Oil & Gas, LLC; Pad ID: Hemlock Hunting Club B Drilling Pad #1; ABR–201607001.R1; Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: July 28, 2021.

23. Seneca Resources Company, LLC; Pad ID: D08–M; ABR–201507007.R1; Norwich Township, McKean County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 28, 2021.

24. ARD Operating, LLC; Pad ID: COP Tr 285 Pad C; ABR–201007062.R2; Grugan Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 28, 2021.

25. ARD Operating, LLC; Pad ID: COP Tr 357 Pad A; ABR–201007075.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 28, 2021.

26. Chief Oil & Gas, LLC; Pad ID: Yonkin B Drilling Pad; ABR–201607003.R1; Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: July 29, 2021.

27. Seneca Resources Company, LLC; Pad ID: DCNR 100 Pad E; ABR–201105009.R2; McIntyre Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 29, 2021.

28. Seneca Resources Company, LLC; Pad ID: Sanchis 1129; ABR–201105017.R2; Farmington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 30, 2021.

29. ARD Operating, LLC; Pad ID: Lycoming H&FC Pad E; ABR–201105013.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 30, 2021.

30. ARD Operating, LLC; Pad ID: COP Tract 728 Pad B; ABR–201106027.R2; Watson Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 30, 2021.

31. ARD Operating, LLC; Pad ID: COP Tract 027B Pad A; ABR–201107030.R2; McHenry Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 30, 2021.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: August 16, 2021.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2021–17810 Filed 8–18–21; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0032]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America, LLC (Daimler)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Daimler Trucks North America, LLC (Daimler) has requested an exemption from the commercial driver's license (CDL) requirements for one of its drivers, Gesa Reimelt. Daimler also requested an exemption for the same driver from the requirement to register CDL holders in the Drug and Alcohol Clearinghouse (Clearinghouse). Ms. Reimelt has a valid German commercial license and will test drive Daimler vehicles on U.S. roads to better understand product requirements in ''real world'' environments and verify results. Daimler believes that the requirements for a German commercial license ensure that the same level of safety is met or exceeded as if this driver had a U.S. CDL.

DATES: Comments must be received on or before September 20, 2021.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2012–0032 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice (FMCSA–2012–0032). Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202–366–2722. *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2012–0032), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2012–0032'' in the ''Search'' box, and click ''Search.'' When the new screen appears, click on ''Documents'' button, then click the ''Comment'' button associated with the latest notice posted. Another screen will appear, insert the required information. Choose whether you are submitting your comment as an individual, an organization, or anonymous. Click ''Submit Comment''.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and materials received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulation(s) Requirements

Under 49 CFR 383.23, no person shall operate a commercial motor vehicle (CMV) unless such person has taken and passed the knowledge and driving skills tests for a commercial learner's permit or CDL that meet the Federal standards in subparts F, G, and H of part 383 for the CMV that person operates or expects to operate. The Clearinghouse maintains records of all drug and alcohol program violations in a central repository and requires that employers query the system to determine whether current and prospective employees have verified drug or alcohol violations that would prohibit them from performing safety-sensitive functions under the FMCSA and U.S. Department of Transportation drug and alcohol testing regulations.

Applicant's Request

Daimler has requested an exemption from 49 CFR 383.23 for Gesa Reimelt, because she is unable to obtain a CDL due to her lack of residency in the United States. Daimler further requested an exemption for the driver from the Clearinghouse requirements of 49 CFR part 382, subpart G, stating that, for a driver to register and for a motor carrier to run full/limited queries and/or report violations to the Clearinghouse, a valid State-issued CDL number is required.

Daimler's Development Engineer/Driver Gesa Reimelt has a valid German commercial license. The exemption would allow Ms. Reimelt to operate a CMV in interstate commerce to support Daimler field tests to meet future regulatory requirements, and to promote the development of improved safety and emissions technologies. Daimler stated that the driver would be in country for no more than six weeks per year.

IV. Equivalent Level of Safety

According to Daimler, the requirements for a German commercial license ensure that the same level of safety is met or exceeded as if a driver had a CDL issued by one of the States. Daimler explained that Ms. Reimelt is familiar with the operation of CMVs worldwide and would be accompanied at all times by a driver who holds a State-issued CDL and is familiar with the routes to be traveled. Additionally, Daimler provided statements of driving history for its driver.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Daimler's application for an exemption from 49 CFR 383.23. The Agency is not seeking comment on Daimler's request for an exemption from the Clearinghouse requirements, because 49 CFR part 382, subpart G is not applicable to a driver who does not hold a CDL. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–17789 Filed 8–18–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2018–0190]

Aviation Consumer Protection Advisory Committee: Notice of Solicitation of Nominations for Appointment for the Anti-Discrimination Subcommittee

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Solicitation of nominations for appointment for the Anti-Discrimination Subcommittee.

SUMMARY: The U.S. Department of Transportation (Department) has established a subcommittee of the Aviation Consumer Protection Advisory Committee (ACPAC) to focus on preventing discrimination and ensuring air travelers are treated equally and without bias. The Department invites interested persons to submit applications or nominations for membership to this subcommittee, which has been named the Anti-Discrimination Subcommittee. The Anti-Discrimination Subcommittee is charged with making recommendations to the ACPAC on best practices related to training and other practices or actions that can be taken by DOT, airlines or others to ensure nondiscriminatory delivery of airlines' programs and activities to air travelers. The recommendations of the Anti-Discrimination Subcommittee will receive full review, deliberation and proper consideration in a public meeting of the ACPAC before final recommendations are submitted to the Department.

DATES: Applications and nominations for membership must be received on or before September 20, 2021. You may submit your applications and nominations electronically via email to *ACACP@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, please contact Maegan Johnson, Senior Trial Attorney, U.S. Department of Transportation, by email at *maegan.johnson@dot.gov,* or by telephone at 202–366–9342.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2012, the Department established an advisory committee on aviation consumer protection as mandated by the FAA Reauthorization Act of 2012. The statutory termination date for the Committee was originally September 30, 2015, but has been extended several times, most recently by the FAA Reauthorization Act of 2018 (2018 FAA Act) to the current termination date of September 20, 2023. The purpose of the Aviation Consumer Protection Advisory Committee is to evaluate existing aviation consumer protection programs and provide recommendations to the Secretary for improving and establishing additional aviation consumer protection programs. Consumer protection inherently includes preventing unlawful discrimination against consumers.

Establishment of the Anti-Discrimination Subcommittee

Airlines are prohibited from discriminating against passengers based on race, national origin, religion, ancestry, gender, gender identity and sexual orientation or as otherwise prohibited under 49 U.S.C. 40127(a) and 49 U.S.C. 41310. 49 U.S.C. 40127(a) states that U.S. and foreign air carriers may not subject a person in air transportation to discrimination because of ''race, color, national origin, religion, sex, or ancestry.'' In addition, 49 U.S.C. 41310(a) prohibits U.S. and foreign airlines from unreasonable discrimination against any person in foreign air transportation. The Department also interprets 49 U.S.C. § 41712 (which prohibits airlines and ticket agents from engaging in unfair and deceptive practices and unfair methods of competition) and 49 U.S.C. 41702 (which requires airlines to provide safe and adequate interstate air transportation) as prohibiting discrimination against airline passengers. The Department is responsible for ensuring that airlines adhere to Federal non-discrimination laws.

The 2018 FAA Act requires the Department to develop best practices to improve airline nondiscrimination training policies in consultation with persons of diverse backgrounds in race, ethnicity, religion and gender, national organizations that represent those communities, airlines, airports and contract service providers. To help inform this effort, in August 2019, the U.S. Government Accountability Office (GAO) issued a report identifying key considerations for airline non-discrimination training programs.

In January 2021, President Biden renewed the Federal government's commitment to civil rights and directed Federal agencies to address all forms of discrimination. The Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (E.O. 13985) requires Federal agencies to recognize and work to redress inequities in their policies and programs, assess whether the agency's programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and assess whether new policies, regulations, or guidance documents may be necessary to advance equity in agency actions and programs. The Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (E.O. 13988) requires Federal agencies to conduct a review of regulations, guidance, and other agency actions that prohibit sex discrimination and consider whether to revise, suspend, or rescind such actions or promulgate new actions, to ensure that laws that prevent discrimination on the basis of gender identity or sexual orientation are fully implemented and enforced. Also, the Presidential Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance against Asian Americans and Pacific Islanders (January 29 Memorandum) requires Federal agencies to take steps to ensure that official actions, documents, and statements pertaining to the COVID–19 pandemic do not exhibit or contribute to racism, xenophobia, and intolerance against members of Asian American and Pacific Islander communities.

The Department has established the Anti-Discrimination Subcommittee under the ACPAC to review airlines' policies, procedures, and practices to prevent discrimination against air travelers on the basis of race, national origin, religion, ancestry and gender, gender identity, and sexual orientation. The Department will select the following entities and diverse persons to serve on the Anti-Discrimination Subcommittee: Persons of diverse backgrounds in race, ethnicity, religion and gender; lesbian, gay, bisexual, transgender, queer (LGBTQ+) persons; national organizations that represent diverse racial, ethnic, and religious communities; national organizations that represent LGBTQ+ communities, airlines, airport operators, contract service providers, and ticket agents. The Anti-Discrimination Subcommittee is tasked with providing recommendations to the ACPAC on best practices related to civil rights training and other practices or actions that can be taken by DOT, airlines or others to ensure nondiscriminatory delivery of airlines' programs and activities to air travelers in accordance with section 407 of the 2018 FAA Act, Executive Orders 13985 and 13988, and President Biden's January 29 Memorandum. Meetings will be held in person in Washington, DC and/or through a publicly accessible virtual format.

Selection of Members to Anti-Discrimination Subcommittee

The Department will choose Anti-Discrimination Subcommittee members based on three main criteria: (1) Representativeness (does the applicant represent the airline industry, any group with members who have experienced discrimination on the basis of race, national origin, religion, ancestry, gender, gender identity, sexual orientation or an otherwise prohibited category under Federal law, or other interested parties such as airports or ticket agents?); (2) expertise (does the applicant bring essential knowledge, expertise and/or experience regarding aviation civil rights and the topic area(s) of interest that will enrich the discussion of the available options and their respective costs and benefits?); and (3) willingness to participate fully (is the applicant able and willing to attend meetings and generally contribute constructively to a rigorous policy development process?). The Department may select more than one representative for a group, if appropriate, to obtain balanced membership.

Individuals applying for membership should keep in mind that Anti-Discrimination Subcommittee members will be selected based on their ability and willingness to effectively represent the interests of all stakeholders in their category, as distinct from their parochial or personal interests. For example, an individual selected to serve on the Anti-Discrimination Subcommittee as a representative of an airline would represent not only his or her own airline, but the interests of all airlines. As such, the individual would be expected to consult with other airlines in bringing issues to the table before the Anti-Discrimination Subcommittee.

All interested individuals may self-apply or nominate any individual or organization to the Anti-Discrimination Subcommittee. To be considered, applicants/nominators should submit the following information:

- Name, title, organization, and contact information (address, telephone number and email address) of nominee/applicant;
- Category of membership that the nominee/applicant is qualified to represent;
- Resume of the applicant or short biography of the nominee including professional and academic credentials;
- A statement of nomination on why the applicant wants to serve or the nominator is nominating the individual to serve, and the unique perspectives and experiences the nominee brings to the Committee;
- An affirmative statement that the applicant/nominee meets the eligibility requirements; and
- Optional letters of support.

Please do not send company, trade association, organization brochures, or any other promotional information. Materials submitted should total five pages or less. Should more information be needed, Department staff will contact the applicant/nominee, obtain information from the applicant's/nominee's past affiliations, or obtain information from publicly available sources. All application/nomination materials should be submitted electronically via email at *ACACP@dot.gov* on or before September 20, 2021. Any person needing accessibility accommodations with preparing and/or submitting nominations should contact Maegan Johnson, Senior Trial Attorney, U.S. Department of Transportation, by email at *maegan.johnson@dot.gov,* or by telephone at 202–366–9342.

Persons selected for appointment to the Anti-Discrimination Subcommittee will be notified by return email and by a letter of appointment. Members of the Anti-Discrimination Subcommittee are responsible for their own travel and per diem expenses.

John E. Putnam,

Acting General Counsel.

[FR Doc. 2021–17749 Filed 8–18–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of open meeting, correction.

SUMMARY: This notice provides updated videoconference links for the U.S. Department of the Treasury's Federal Advisory Committee on Insurance (FACI) meeting on Thursday, September 9, 2021 from 11:00 a.m.–1:00 p.m. Eastern Time. The meeting is open to the public.

DATES: The meeting will be held via videoconference on Thursday, September 9, 2021, from 11:00 a.m.–1:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Jigar Gandhi, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (202) 622–3220 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In a notice in the **Federal Register** on August 11, 2021 (86 FR 44139), the Department announced the September 9, 2021 videoconference meeting of the FACI. That notice inadvertently included inoperable hyperlinks that are corrected by this notice.

The meeting will be held via videoconference and is open to the public. The public can attend remotely here: *http://www.yorkcast.com/treasury/events/2021/09/09/faci.* The webcast will also be available through the FACI's website: *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/federal-advisory-committee-on-insurance-faci.* For more details about the meeting, see the August 11, 2021 notice.

Dated: August 16, 2021.

Steven Seitz,

Director, Federal Insurance Office.

[FR Doc. 2021–17774 Filed 8–18–21; 8:45 am]

BILLING CODE 4810–AK–P

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